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**Do Transitional Administrations Fail? A Comparative
Study of the Kosovo and East Timor Experiences**

Dissertation

zur

Erlangung des akademischen Grades

Doktor der Sozialwissenschaften

in der Fakultät

für Sozial- und Verhaltenswissenschaften

der Eberhard-Karls-Universität Tübingen

2009

Gedruckt mit Genehmigung der
Fakultät für Sozial- und Verhaltenswissenschaften
der Universität Tübingen

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Tag der mündlichen Prüfung: 29.04.2009

For Martin and Isabelle

Acknowledgements

This work has been a long journey. Along the way various institutions and individuals have helped me shape the ideas and dilemmas identified in the chapters. I would like to thank in particular my supervisor Volker Rittberger for his support throughout the way and his never ending motivation and helpful comments. I am grateful for the generosity of the Friedrich-Naumann-Foundation that has supported this project for the past three years (2005-2008) with monthly grants. I am also thankful to the fellow scholars of the Foundation whom I met at different liberal workshops and whose talent was an enormous inspiration. I am thankful to the participants of the Tuebingen Peace and Conflict Studies Graduate Workshops, in particular to Thorsten Göbel, Carmen Huckel, Frederike van de Poll, Makiko Yamauchi, Verena Andrei and Cora Ziegenbalg for the useful comments and motivation.

I owe special thanks to the organizers, discussants and participants at numerous international conferences: the 2006 Einstein Joint Doctoral Workshop at the Hebrew University, Jerusalem, Israel; the 2007 Fourth European Consortium for Political Science Research General Conference in Pisa, Italy; the German East Timor Society and the 2008 organized biennial conference in Cologne, Germany; the 2008 49th International Studies Association Annual Conference in San Francisco, USA and the first British-German International Relations Conference in Arnoldshain, Germany, 2008. I wish to thank in particular Kirsten Ainley and Chris Brown for their comments and inspiration, David Chandler for the useful remarks, Alexander Loch for sharing his ideas with me, Philip Cunliffe for providing stimulating insights, Jens Narten for sharing work with me and Beate Jahn for keeping me on my toes with her comments. I express my gratitude to Stephen Nitz of the Peace Research Institute Library in Frankfurt and thank Christian Danner for the IT support.

Last but not least, I am grateful to my family for the enormous support during this long journey. My special thanks go to my parents-in-law and Jutta who spent numerous hours babysitting our daughter Isabelle. I am grateful to my parents for their constant support. Above all I wish to thank my husband Martin for standing by me and believing in my ideas, for his relentless motivation and support and for taking the time to read parts of the manuscript. Martin and Isabelle, this study would not have been possible without your love and understanding, this study is dedicated to you!

Bad Homburg, Germany, 2009

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List of Abbreviations and Acronyms

AAK	<i>Aleanca për Ardhmërinë e Kosovës</i> , Alliance for the Future of Kosovo
AIETD	All-Inclusive Intra-East Timorese Dialogue
AKR	Alliance for a New Kosovo
APODETI	<i>Associação Popular Democrática Timorese</i> , Timorese Popular Democratic Association
ASDT	<i>Associação Social Democrática Timor</i> , Timorese Social Democratic Association
BRTT	East Timor People's Front
CAVR	<i>Comissão de Acolhimento, Verdade e Reconciliação</i> , East Timorese Commission for Reception, Truth and Reconciliation
CBMs	Confidence-Building Measures
CIS	<i>Gradanska Inicijativa Srbija</i> , Civil Initiative Serbia
CNRM	<i>Conselho Nacional de Resistencia Maubere</i> , National Council of Maubere Resistance
CNRT	<i>Conselho Nacional de Resistencia Timorese</i> , National Council of Timorese Resistance
CPD-RDTL	Popular Council for Defence of the Democratic Republic of Timor-Leste
DAC	Development Assistance Committee
DS	Democratic Party, Republic of Serbia
DSS	Democratic Party of Serbia
ESDP	European Security and Defence Policy
ETDF	East Timor Defence Force
ETPA	East Timor Public Administration
ETPS	East Timor Police Service
ETTA	East Timor Transitional Administration
EU	European Union
EUAM	European Union Administration of Mostar, Bosnia-Hertsegovina
EULEX KOSOVO	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
FALINTIL	<i>Forças Armadas de Libertação Nacional de Timor-Leste</i> , Armed Forces for the National Liberation of East Timor
FPDK	Forum for Unity, Democracy and Justice
FRETILIN	<i>Frente Revolucionária de Timor Leste Independente</i> , Revolutionary Front for an Independent East Timor
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GPA	Governance and Public Administration
HAER	Humanitarian Assistance and Emergency Rehabilitation
IAC	Interim Administrative Council, Kosovo
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICO	International Civilian Office, Kosovo
ICR	International Civilian Representative

ICTY	International Criminal Tribunal for the Former Yugoslavia
IDPs	Internally Displaced Persons
IEC	Independent Electoral Commission, East Timor
IMC	Independent Media Commission, Kosovo
IMF	International Monetary Fund
INTERFET	International Force for East Timor
ITA	International Territorial Administration
JIAS	Joint Interim Administrative Structure, Kosovo
KFOR	Kosovo Force (led by NATO)
KIA	Kosovo Intelligence Agency
KLA	Kosovo Liberation Army
KP	<i>Koalicija Povratak</i> , Kosovo Serb Return Coalition
KPA	Kosovo Property Agency
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
KSF	Kosovo Security Force
KPST	Kosovo Pension Saving Trust
KTC	Kosovo Transitional Council
KTA	Kosovo Trust Agency
KVA	<i>Komisaun Verdade e Amizade</i> , Commission for Truth and Friendship
LBD	United Democratic Movement, Kosovo
LDD	Democratic League of Dardania, Kosovo
LDK	<i>Lidhja Demokratike e Kosovës</i> , Democratic League of Kosovo
LKCK	National Movement for the Liberation of Kosovo
LPK	<i>Lëvizja Popullore e Kosovës</i> , People's Movement of Kosovo
MINURSO	United Nations Mission for the Referendum in Western Sahara
MTF	Multinational Task Force
NATO	North Atlantic Treaty Organization
NC	National Council, East Timor
NCC	National Consultative Council, East Timor
NDI	National Democratic Institute, Kosovo
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
ONUC	United Nations Operation in the Congo
ONUSAL	United Nations Observer Mission in El Salvador
ORA	Kosovo party formed by publisher Veton Surroi
OSCE	Organization for Security and Cooperation in Europe
PDK	<i>Partia Demokratike e Kosovës</i> , Democratic Party of Kosovo
PISG	Provisional Institutions for Self-Government in Kosovo
PLO	Palestine Liberation Organization
PNT	Timorese National Party
POLISARIO	Independence Movement of Western Sahara
QIPs	Quick Impact Projects
RAE	Roma, Ashkali and Egyptian communities, Kosovo
RDTL	Democratic Republic of Timor-Leste, in Portuguese <i>República Democrática de Timor-Leste</i> , in Tetum <i>Repúblika Demokrátika Timor Lorosa'e</i>
RTK	<i>Radio Televizioni i Kosovës</i> , Radio Television of Kosova
R2P	Responsibility to Protect

SADR	Sahrawi Arab Democratic Republic
SARET	Special Autonomous Region of East Timor, in Indonesia
SFRY	Socialist Federal Republic of Yugoslavia
SR SG	Special Representative of the UN Secretary-General
SNC	Serb National Council
SNC-G	Serb National Council – Gracanica
SNC-M	Serb National Council – north Mitrovica
SLKM	<i>Srpska Lista za Kosovo i Metohiju</i> , Serbian List for Kosovo and Metohija
TA	Transitional Administration
TMC	Temporary Media Commission, Kosovo
TNI	<i>Tentara Nasional Indonesia</i> , Indonesian Armed Forces
UCK	<i>Ushtria Clirimtare e Kosovës</i> (KLA in English)
UDT	<i>União Democrática de Timor</i> , Timorese Democratic Union
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMET	United Nations Mission to East Timor
UNAMSIL	United Nations Mission to Sierra Leone
UNCIP	United Nations Commission for India and Pakistan
UNCOK	United Nations Commission on Korea
UNCURK	United Nations Commission for the Reunification and Rehabilitation of Koreas
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOSOM	United Nations Operation in Somalia
UNOTIL	United Nations Office in Timor-Leste
UNPROFOR	United Nations Protection Force
UN SC	United Nations Security Council
UN SCR	United Nations Security Council Resolution
UN SG	United Nations Secretary-General
UN TA	United Nations Transitional Administration
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, Croatia
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transitional Assistance Group in Namibia
UNTCOK	United Nations Temporary Commission on Korea
UNTEA	United Nations Temporary Executive Authority in West Irian

... Peacebuilding requires national ownership, and must be homegrown. Outsiders, however well-intentioned, cannot substitute for the knowledge and will of the people of the country concerned. It is the latter who best know their own history, culture and political contexts. It is they who live with the consequences of the decisions taken. And it is they who must feel that peace building is their achievement, if it is to have any hope of lasting.

Address by UN Secretary-General Kofi Annan to the first session of the Peacebuilding Commission in New York, 23 June 2006.

Abstract

English: This study analyses the question of whether international peacebuilding efforts in weak, failed or failing states via United Nations Transitional Administrations (UN TAs) are successful. As successful are deemed those transitional administrations that manage to hand over power to the local population and achieve local ownership. By comparing the United Nations Interim Administration Mission in Kosovo (UNMIK, 1999-) with the United Nations Transitional Administration Mission in East Timor (UNTAET, 1999 – 2002), it is proposed that TAs tend to be more successful, when conflicting ethnic interests are low, when there are higher levels of local participation in the transitional structures and when more benchmarks (as stipulated by the international peacebuilders) are achieved. The success of a transitional administration is thus, seen as an interplay between local (micro), national (meso) and international (macro) factors, which together determine the *Space for Local Ownership of Peacebuilding (SLOP)*. A higher *SLOP* signifies a more successful TA. On a theoretical level of analysis an attempt is made to bridge apolitical approaches to peacebuilding, professing social engineering, with political approaches to peacebuilding, advocating change from within. On an empirical-analytical level of analysis it is viewed that the proposed model of *SLOP* appropriately reflects the dynamics and challenges of current peacebuilding efforts in failed states.

Keywords: peacebuilding, failed states, transitional administrations, Kosovo, East Timor.

German: Diese Arbeit analysiert die Fragestellung, inwieweit Friedensmissionen in Form von UNO-Übergangsverwaltungen in gescheiterten oder schwachen Staaten erfolgreich sind. Als erfolgreich werden diejenigen Übergangsverwaltungen angesehen, welche in der Lage sind, die Regierung der lokalen Bevölkerung zu übertragen und damit „lokales Eigentum“ zu kreieren. Eine Analyse der Übergangsverwaltungen im Kosovo (1999-) und Osttimor (1999-2002) ergibt, dass Übergangsverwaltungen dann erfolgreicher sind, wenn die ethnische Zerrissenheit im betroffenen Staat gering ist, die lokale Bevölkerung während der Übergangsregierung an politischen Prozessen aktiv partizipiert und eine hohe Anzahl der international angestrebten Benchmarks erreicht werden. Dementsprechend wird der Erfolg einer Übergangsverwaltung von lokalen, nationalen und internationalen Faktoren bestimmt, welche zusammengenommen einen Raum für erfolgreiche Friedensherstellung bilden. Je größer dieser Raum ausfällt, desto größer ist der Erfolg von Übergangsverwaltungen. Auf theoretischer Ebene zielt diese Arbeit darauf ab, eine Brücke zwischen politischen und apolitischen Ansätzen in Bezug auf Friedensherstellung zu bilden. Auf einer empirisch-analytischen Ebene zeigt diese Arbeit, dass das entwickelte Modell des lokalen Eigentums die aktuellen Herausforderungen und Dynamiken der Friedensherstellung in gescheiterten Staaten angemessen illustriert.

Schlüsselkonzepte: Friedenaufbau, gescheiterte Staaten, Übergangsverwaltungen, Kosovo, Osttimor.

1. INTRODUCTION

1.1 Project background

This study examines the peacebuilding initiatives under the auspices of the United Nations in failed states and post-conflict societies. Two particular developments have seemed to legitimize UN interference in the domestic realm of states in a post-Cold War era: firstly, the increasing importance accorded to failed states and the stemming need to rebuild them, and secondly, the inauguration of the *Responsibility to Protect* (R2P) principle.

1.1.1 Failed states

In a post-Cold War world order, and especially post-9/11, the issue of failed states is becoming increasingly important. Failed, failing and weak states are no longer attempted to be saved solely for humanitarian reasons or for reasons pertaining to international peace and security, as was the case with the early post-Cold War initiatives in Somalia, Cambodia, Namibia, Bosnia-Hertsegovina, Kosovo and East Timor. In a post-9/11 era, failed states are increasingly seen as potential hazards to national peace and security, e.g. Iraq and Afghanistan¹. Thus, 9/11 magnified how detrimental failed states can be to international and national peace and security and resuscitated the relevance of failed states' post-conflict reconstruction in the study of International Relations. International attempts to rebuild and reconstruct failed states and post-conflict societies via transitional administrations (TAs) under the auspices of the United Nations (UN) are the object of analysis of the present study. This study argues that the inauguration of the responsibility to protect (R2P) legitimized international peacebuilding via TAs in post-conflict societies and failed states. Although post-conflict societies and failed states are two different terms, in the current study they are used synonymously for two reasons: firstly, Kosovo and East Timor are

¹ In this respect Hamre & Sullivan (2002: 85) note 'One of the principle lessons of September 11 is that failed states matter – not just for humanitarian reasons but for national security as well. If left unattended, such states can become sanctuaries for terrorist networks with a global reach, not to mention international organized crime and drug traffickers who also exploit the dysfunctional environment'.

viewed as simultaneously being post-conflict societies and failed states for the peacebuilding initiative launched in both regions occurred after a concrete conflict and resembled the rebuilding of a failed state, meaning that institutions were constructed from scratch and secondly, following the definition of failed states of Patrick & Brown (2007), whereby post-conflict societies are treated as only one type of failed states, failed states are viewed as an umbrella concept that encapsulates also post-conflict peacebuilding. Thus, post-conflict societies are viewed as a sub-field of failed states and therefore, it is necessary to examine the phenomenon of failed states.

1.1.2 The ‘Responsibility to Protect’ principle (R2P)

Failed or weak states are not a new phenomenon. It is enough to consult Krasner (1999) in order to witness that neither globalization, nor weak states or porous borders are a new occurrence². However, what has changed in a post-Cold War environment is the concept of sovereignty. Today one is witnessing the development and strengthening of the norm of sovereignty. That is to say, sovereignty is no longer taken as an exclusive right (as was often the case with traditional territorial sovereignty); rather it is deemed to be an obligation, a responsibility to protect one’s own citizens and their security. Sovereignty entails responsibilities, and whenever, the state fails to protect its citizens, it becomes the obligation of the international community to intervene and re-establish peace and security, ensure the respect for human rights and protection of minorities. Failed states possess juridical, but not empirical sovereignty and consequently are unable to deliver basic political goods and services to their population, breaching upon the social contract, establishing states in the first place (Rotberg 2004: 2-3).

In a changed international milieu where sovereignty is deemed not as an exclusive right, but as a responsibility, failed states can no longer be tolerated. Consequently, the very social contract, which provided the modern state with a means of existence, is no longer perceived as inviolable, but as a duty, which when unfulfilled, will be delegated to the international society of states.

² Stephen Krasner (1999: 69) notes that in the pre-Westphalian and Westphalian system of international society sovereignty was never really absolute, interests occasionally trumped morals and the logic of consequences seldom followed the logic of appropriateness in a system dubbed as ‘organized hypocrisy’.

It is precisely for this reason that in 2001 the International Commission on Intervention and State Sovereignty (ICISS) set down the *Responsibility to Protect* (R2P) principle, which in 2004 was reiterated by the Report of the High-Level Panel on Threats, Challenges and Change *A More Secure World: Our Changed Responsibility*. The ICISS stated³:

... a cohesive and peaceful international system is far more likely to be achieved through the cooperation of effective states, confident of their place in the world, than in an environment of fragile, collapsed, fragmenting or generally chaotic state entities.

Thus, effective states are far more likely to contribute to a peaceful international system. Under effective states are understood both peaceful and well-functioning states. The R2P officially endowed the international community with the responsibility and the right to override the principle of non-intervention in the domestic affairs of states in cases when grave threats to human rights exist that endanger international and national peace and security and the functioning of the state and the state system. UN TAs have been charged exactly with this role in a post-Cold War era – to ensure that states are effective and not failed, by assuring that they are both peaceful and well-functioning.

The responsibility to protect principle has been institutionally supported by the establishment of the Peacebuilding Commission (December 2005). In his address to the first opening session of the Peacebuilding Commission, former UN Secretary General Kofi Annan⁴ stressed the need for national ownership in peacebuilding:

... Peacebuilding requires national ownership, and must be homegrown. Outsiders, however well-intentioned, cannot substitute for the knowledge and will of the people of the country concerned. It is the latter who best know their own history, culture and political contexts. It is they who live with the consequences of the decisions taken. And it is they who must feel that peace building is their achievement, if it is to have any hope of lasting.

On a similar note, UN Secretary-General Ban Ki-moon⁵ concluded that ‘The Peacebuilding Commission – created to support societies recovering from the devastation of war - had shown in its first year that the consolidation of peace must be

³ International Commission on Intervention and State Sovereignty (ICISS: 2001), *The Responsibility to Protect*.

⁴ Address by UN Secretary-General Kofi Annan to the first session of the Peacebuilding Commission in New York, 23 June 2006.

⁵ Remark made at the 10th meeting of the Peacebuilding Commission in New York, 27 June 2007.

based on both national ownership and international partnership'. Thus, the need for a partnership between all the stakeholders involved and the need for national, i.e. local ownership has been stressed. The need for partnership and ownership is also stressed by the current study.

1.2 State of the art

Although peacebuilding initiatives in post-conflict societies or failed states have soared with the end of the Cold War and post-9/11, the record of success of these endeavours has remained mixed⁶. This mixed record of success has also been reflected by the literature on peacebuilding missions and TAs, for it represents a multitude of 'best practices' reports and analyses, trying in hindsight to stipulate benchmarks for success. The peacebuilding literature is predominantly descriptive and policy-oriented in nature. Few have been the attempts to link peacebuilding with international relations theory and position it within a paradigm. Moreover, the inclusion of the 'failed states' dimension into peacebuilding practices post-9/11 has presupposed that the indigenous structures in a society are non-usable and has led to an increasingly macro-oriented approach to peacebuilding, depicting an exclusion of the local political process from the realm of peacebuilding⁷. A major proponent of this macro-approach to peacebuilding has been Paris (2004) who suggests that institutions should first be in place before they can be liberalized and immersed into the political process of the country being rebuilt (*Institutionalization before Liberalization – IBL*). Critics of the macro and apolitical approach to peacebuilding include Chandler (2006), Cunliffe (2007) and Bickerton (2007). However, the solutions that Cunliffe and Bickerton have proposed rest within the local level of analysis.

This study attempts to move beyond the strategy proposed by Paris and distance itself from the policy-oriented bulk literature on peacebuilding. Rather, this study states that for peacebuilding to be successful in a particular region or country, attention should be equally devoted to the interplay between micro (local), meso (national) and macro (international) levels of analysis in peacebuilding (referring to an

⁶ For more information refer to Doyle and Sambanis (2006), Smith and Dee (2003), Call and Cousens (2008).

⁷ A point also defended by Chandler (2006) who refutes the merely apolitical approach to peacebuilding, which does not treat root causes accordingly.

interplay between structures and actors' identities). Any failure to address the different levels of analysis would provide a skewed analysis and representation of the peacebuilding success achieved.

Moreover, this study hopes to bridge the existing theoretical debates between proponents of apolitical peacebuilding (no local participation at all) with political peacebuilding (merely local participation) by proposing a synchronization of the political and apolitical in peacebuilding.

1.3 Research design

In order to bridge the political and apolitical approaches to peacebuilding this study suggests an analysis of the interplay between micro, meso and macro factors that impact upon the success of peacebuilding undertaken by United Nations Transitional Administration (UN TAs). Such an interplay between the different levels of analysis of peacebuilding is viewed as being better suited to answer the study's research question.

1.3.1 Research question and propositions

This study analyses the question of *whether peacebuilding efforts in failed states via United Nations transitional administrations are successful in achieving their end goal of handing over power to the local population, e.g. in creating local ownership.*

This research question forms part of the greater research puzzle as to why in some cases UN TAs are able to hand over power to the local population and leave the territory (Cambodia, East Timor, El Salvador, Namibia) and in other cases (Kosovo, Bosnia-Hertsegovina, Cyprus, Lebanon) they are unable to. This study argues that local ownership is the missing link to the identified research puzzle. Thus, a staged dependent variable is proposed (success of a TA). On the one hand, as successful TAs are deemed those TAs able to hand over power to the local population and leave a territory, whereas the inability of TAs to leave a particular region is deemed as failure, e.g. Kosovo, Bosnia-Hertsegovina. On the other hand, under the ability to hand over power to the local population is not understood merely an exit strategy for the international community, rather reference is made to deeper societal and institutional changes that will be sustainable and durable after the international community departs, reference is made to local ownership, deemed as necessary for a peaceful and well-

functioning state to exist. Thus, the achievement of local ownership is viewed by this study as a precondition for a successful exit strategy and as a prerequisite for the attainment of Galtung's concept of positive peace⁸ (peace referring not only to the absence of violence, but also to structural changes that address the root causes of violence). Moreover, local ownership is a concept that has only recently been included in the peacebuilding literature. Therefore, it represents a realm that is relatively understudied in theory and in practice.

It is worth noting that the achievement of local ownership is not treated as a once-off event, rather it is envisaged as a spiral, which can either develop upwards or downwards, depending on the local population during the peacebuilding process or after the handing over of power, thus it refers to a process and cannot be easily measured. Therefore, a *Space for Local Ownership of Peacebuilding (SLOP)* model is proposed. The greater the space for local ownership created by a TA, the more successful a TA is likely to be, argues this study. Drawing on Doyle & Sambanis' (2006) peacebuilding triangle⁹ and based on an inductive comparison between the United Nations Interim Administration Mission in Kosovo, UNMIK 1999- , (examined until August 2008), and the United Nations Transitional Administration in East Timor, UNTAET (1999-2002), three propositions have been formulated with regards to the success of TAs.

Firstly, a TA is likely to be more successful when conflicting ethnic interests in the society being rebuilt are low.

Secondly, a TA is likely to be more successful when it encounters local participation from the society concerned.

Thirdly, a TA is likely to be more successful when more benchmarks (as stipulated by the international community) are achieved. This proposition relates to the importance of the clarity of the mandate of a TA.

⁸ See Galtung (1975).

⁹ Doyle and Sambanis (2006) construct a peacebuilding triangle, claiming that the space for peace will be greater when the local and international capacities are greater and when hostilities are lower. Amongst their hostility indicators the authors list ethnoreligious wars and ethnic fractionalization as variables. However, although Doyle and Sambanis (2006) list local capacities as a variable in their triangle and analyse peacebuilding success according to the variable of 'participatory peace', in reality the authors do not analyse local participation or general will to take part in the political process. As indicators for local capacities the authors list (Doyle & Sambanis 2006: 104-8) the development level of the country and its resource dependency. Thus, Doyle and Sambanis ignore the political process as a participatory one and follow rather an *IBL* account of peacebuilding. The authors contrast the micro with macro factors, but ignore the meso (national) level, which this study deems as important.

In essence, these three propositions refer to three different levels of analysis of TAs: a local one - where conflicting ethnic interests are present, a national one – where all segments of society need to be involved in peacebuilding and an international one – which analyses to what extent the externally stipulated benchmarks and standards have been met by the local community. The argument proposed is that it is not enough to analyse TAs as an institution only on the macro level (size and competence of personnel, timing, costs, etc.), but it is necessary to examine it also on a micro (local) and meso (national) level and see whether the TA has been able to foster sustainable local ownership, rather than merely an exit strategy for the international community.

Apart from viewing the success of a TA as an interplay between the local, national and international levels of analysis, this study also tries to bridge the identified political and apolitical debate with regard to peacebuilding. This is done by ascribing a democratic and a liberal aspect to local ownership. In other words, this study defends the idea that to create local ownership, it is not enough to have local participation *per se* since participation can also lead to authoritarian or illiberal governance and a repetition of the initial causes of conflict. Rather, local ownership should also include a liberal element to it (reflected in the benchmarks achieved) as a guarantee and safeguard against authoritarian developments. Thus, the local ownership achieved in a particular society is seen as including both democratic and liberal dimensions to it, where democratic local ownership is presupposed by local participation and liberal local ownership by the benchmarks achieved.

The proposition is also made that conflicting ethnic interests impact not only on the space for local ownership, but also on the liberal and democratic dimensions attached to it, namely on the degree of local participation and amount of benchmarks achieved. Thus, this study views conflicting ethnic interests as an independent variable that impacts negatively on the intervening variables of local participation and benchmarks achieved and on the dependent variable (success of a TA). Subsequently, this study suggests that for local ownership (stage I of success of a TA) to be achieved conflicting ethnic interests need to be transformed into constructive opposing views in a democratic process, be it through greater incentive-provisions that will make the communities realize that the dividends of peace are greater than those of war (rationalist approach), or through an attempt to forge a shared identity based on justice and reconciliation (constructivist approach).

Thus, the propositions made towards the achievement of local ownership in a post-conflict society are interpreted from both a rationalist ‘logic of consequences’ framework, as well as from a constructivist ‘logic of appropriateness’ framework.

Introducing the concept of local ownership to define the success of UN peacebuilding via TAs is a novel exercise. Employed predominantly in the development field¹⁰, this term has been avoided by apolitical peacebuilders due to the fear of a recurrence of violence (Paris 2004, Chesterman 2007). On the other hand, proponents of political peacebuilding (Cunliffe 2007, McCormack 2007) have espoused the stance that political change and institution-building is a prerogative of the state and its people, viewing as illegitimate any attempts of peacebuilding, whereby outsiders intrude into the domestic realm of the state. However, the debate between scholars defending apolitical peacebuilding and those in favour of political peacebuilding has provided two extremes without any attempts to go beyond.

The proposed model of *SLOP* attempts to go beyond the debate of whether state institutions or society should be sovereign and empowered first. Rather, *SLOP* focuses on the ‘how’ question – how can the space for local ownership in a state and society be maximized during and after peacebuilding. In order to be able to answer this question process-tracing has been undertaken in two cases of peacebuilding: Kosovo and East Timor. Consequently, an attempt is made to trace ‘how’ the transfer of power from the international and temporary administration to the local population has taken place. In doing so, the interplay between the three levels of analysis: micro, meso and macro has been identified as crucial to the attainment of local ownership in peacebuilding via TAs. Corresponding to these three levels of analysis have also been the study’s research variables.

1.3.2 Research variables

By comparing UNMIK with UNTAET it has been found that three important variables influence the achievement of local ownership: 1) conflicting ethnic interests in the society in question, 2) local participation and 3) benchmarks achieved. It is proposed that high conflicting ethnic interests lead to lower local participation and fewer benchmarks achieved, thus impacting negatively on the *Space for Local Ownership of Peacebuilding* and consequently, on the success of a TA. The success of a TA is thus

¹⁰ See Narten (2007).

seen as an interplay between the above-mentioned variables, constructing a *Space for Local Ownership of Peacebuilding* (SLOP).

The independent variable of conflicting ethnic interests is defined as irreconcilable interests with regard to political goals¹¹. Conflicting ethnic interests can best be measured by examining the multiethnic structure of the peacebuilding process. For example, the participation of ethnic minorities in elections, the occurrence of large-scale ethnic violence after UN deployment, the existence of parallel government structures, segregation of the public sector and the presence of cross-cutting identities in political parties can all be viewed as elements of a society, witnessing the existence or absence of conflicting ethnic interests.

The intervening variable of local participation is defined as the participation of all stakeholders in the peacebuilding process and measured in terms of the devolution of institutions to the local population, degree and pace of devolution, representativeness of the political process of different segments of society, as well as voter turnout.

The intervening variable of benchmarks achieved is revealed in the mandate of a UN TA, as well as in the constitutional documents and legal documents issued by the TA. The progress of benchmarks achieved can best be traced by examining the UN Secretary-General (SG) progress reports on a specific mission. It is argued that the clarity of the mandate is crucial to the achievement of the stipulated benchmarks.

A staged dependent variable (success of a TA) is proposed, whereby stage II refers to the ability of a TA to hand over power to the local population and leave a territory and is, thus, directly observable, whereas stage I of success refers to the ability of a TA to create local ownership. Due to the fact that the creation of local ownership cannot be directly observed and is deemed as a prerequisite for the successful handing over of power to the local population and a successful exit strategy of a TA, it is the object of analysis of the present study. Local ownership is understood in terms of the degree of owning the process of self-governance, implying both a commitment to and exercise of liberal self-government.

¹¹ According to Connor (1994) a nation has achieved political status in a state, whereas an ethnies strives towards such political self-determination.

1.3.3 Methodology and case study selection

This research is both deductive (with regard to the theoretical survey) and inductive in nature. Analysis focuses primarily on the progress reports of the UN SG for the two TAs in Kosovo and East Timor. The method of analysis rests on controlled comparison of the two cases and process-tracing within each case in order to determine the effect that the interplay between local, national and international factors has had on the achievement of local ownership.

The two cases of Kosovo (UNMIK) and East Timor (UNTAET) have been selected due to similar background conditions (small territory, population size, inexperience with independent self-governance). Similarly, the TAs in Kosovo and East Timor have been the only two cases after the Cold War and before 9/11 with a complete takeover of governing powers in the territory in question. Moreover, in the peacebuilding literature Kosovo is often referred to as a failure, whilst East Timor as a success (following the achievement of independence on 20 May 2002 and the renaming of East Timor to the Republic of Timor-Leste) – thus providing a variance on the dependent variable under study – the success of a TA. Whereas the UN is still present in Kosovo, in East Timor the transitional administrators departed soon after independence, offering a good ground for comparison with regard to the research question, based on Mill's 'method of difference'¹² (van Evera 1997). Finally, unlike the latest initiatives of peacebuilding under the aegis of the Peacebuilding Commission in Sierra Leone and Liberia, Kosovo and East Timor offer a longer time-span of peacebuilding activities that allow for an easier measurement of the local ownership achieved.

1.3.4 Theory: social constructivism vis-à-vis rationalism

Since the proposed research variables are equally susceptible to a rationalist and social constructivist interpretation, attention is devoted to both strains of thought in International Relations, dwelling upon whether the rationalist or constructivist approach have been better sources of explaining the Kosovo and East Timor case.

Due to the fact that constructivism is understood in terms of mutually shared norms and expectations (Krasner 1999: 46), stressing the 'constitutive effect of ideas'

¹² According to van Evera (1997) the large amount of similar background conditions, alleviates the control for possible causes of the different success levels of the TA.

(Wendt 1999: 23, 184), TAs and the benchmarks of good governance can be viewed as values and norms (e.g. democratization, rule of law, economic liberalization, human rights, the protection of minorities etc)¹³. On the other hand, conflicting ethnic interests can be deemed as a construct as well, representing a particular norm. As carriers of universal norms of good governance TAs often collide with the particular norms present within society. Thus, peacebuilding juxtaposes the ‘one size fits all’ idea of ‘good governance’ with particular notions of good governance. This study argues that the success of a TA in this case depends on its ability to deconstruct conflicting ethnic interests and construct a collective national identity.

However, ethnic identities can also be of an instrumental nature¹⁴, serving specific interests and possessing a distinct rationale. In contrast to the normative considerations of social constructivism, empirical-analytical approaches to International Relations stress the ‘logic of consequences’ as opposed to ‘the logic of appropriateness’ (Krasner 1999: 41). According to the ‘logic of consequences’ interest and calculus, as well as power are primary: as such they can hinder the success of international endeavours. According to a rationalist logic a TA will be successful when the benchmarks it carries are deemed as ‘useful’.

1.4 Outline of the argument

The present study encapsulates seven chapters. Chapter one serves as an introduction.

Chapter two dwells upon the different approaches (contractarian, Weberian and juridical) to analysing what constitutes a state and a failed state. This chapter examines the nexus between sovereignty and self-determination and proceeds to analyse what kind of a state should be constructed, paying attention to the role of liberalism and democracy in peacebuilding.

Chapter three examines the phenomenon of peacebuilding via TAs, and the theory and history behind the establishment of TAs, analysing to what extent the roles

¹³ These values and norms have been stressed by both UNSCR 1244, applying to Kosovo and by UNSCR 1272 in respect of East Timor. The norms of transparency, lack of corruption and rule of law in government institutions are often described as underlying ‘good governance’ (Hippler 2004: 251).

¹⁴ With regard to ethnicity, there are three distinct schools of thought: primordialism, instrumentalism and social constructivism. The first strain emphasizes ethnic identity as a given, the second strain refers to the cost-benefit calculus of identity and the third strain refers to the social construction of identity (in Daniella Iordanova 2002).

of TAs, in terms of forging effective states (peaceful and well-functioning), have been novel or continuous exercises.

Chapter four is devoted to the research design. This chapter stipulates the measurement of the research variables and draws on an extensive literature survey. The chapter distinguishes between a rationalist and constructivist approach to the study of peacebuilding.

Chapter five analyses the United Nations Interim Administration Mission in Kosovo (UNMIK 1999-) until August 2008. It illustrates how conflicting ethnic interests, local participation and the achievement of stipulated benchmarks have interplayed in a Kosovo setting and what type of an effect they have had on *SLOP*.

Chapter six analyses the United Nations Transitional Administration in East Timor (UNTAET 1999-2002). It illustrates how conflicting ethnic interests, local participation and the achievement of stipulated benchmarks have interplayed in an East Timor setting and what type of an effect they have had on *SLOP*.

Chapter seven investigates the implications and ramifications of the comparison between Kosovo and East Timor in light with the recent developments in Georgia and the Caucasus. This chapter serves as a conclusion that positions the findings of the study both within an international relations theory perspective in terms of the identified gaps in the peacebuilding literature and also with regard to the future administration of TAs in conflict-ridden regions.

With the continued increase in importance of both failed states and peacebuilding initiatives this study hopes to make a contribution to a topical and debatable issue – namely, the reconstruction of failed states, whereby the proposed *SLOP* can answer the research puzzle as to why in some cases TAs are successful in handing over power to the local population and leaving a territory, and why in other cases an exit strategy has proven hard to achieve. The *SLOP* model defends the notion of *stages of success*, rather than the overused success/ failure dichotomy in the predominantly descriptive peacebuilding literature. Thus, unlike the once-off event of an exit strategy for a TA, this literature-assessing and theory-proposing study introduces a model of local ownership, which empirically-analytically presupposes sustainability for the peace being built and theoretically bridges the identified apolitical-political debates within the peacebuilding literature.

2. ON SOVEREIGNTY AND STATE FAILURE

2.1 Introduction

This study is about post-conflict peacebuilding under the auspices of the United Nations (UN) Transitional Administrations (TAs) in Kosovo and East Timor. UN peacebuilding via TAs entails the assumption of some or all governing powers in the state in question on a temporary basis¹⁵. Thus, a debate has ensued with regard to the practice of modern peacebuilding: a debate pertaining to the question of popular sovereignty and whether popular sovereignty is realized through an independent state or individual.

On the one hand, TAs have been treated as an intrusion on the Westphalian practice of sovereignty as confirmed in Article 2(7) of the UN Charter, which prohibits the intervention in the domestic jurisdiction of members states, save in those cases when international peace and security need to be restored (UN Charter, Chapter VII) for the main purpose of the UN is to ‘maintain international peace and security’¹⁶ and take collective action to prevent and remove all threats to peace (Article 1(1) of the UN Charter). Thus, proponents of Westphalian sovereignty have argued that it is the state and not the citizens that are sovereign and, therefore, TAs that impair on a state’s sovereignty cannot be expected to foster a lasting and sovereign relationship between state and society. This argument builds on a Walzerian¹⁷ concept of change and development, coming from within the state and has been defended by authors such as Cunliffe (2007). Walzer (1983) and Cunliffe (2007) refer to the rights of political

¹⁵ Definition provided by Chesterman (2001b: 3).

¹⁶ The Preamble of the UN Charter states that the peoples of the United Nations are determined to ‘save succeeding generations from the scourge of war’.

¹⁷ Michael Walzer (1983) argues that self-determination and political freedom are not equivalent terms, for self-determination is the right of people to become free by their own efforts, whereby liberty can be eventually won (or not). For Walzer the essence of self-determination is that the members of a political community must seek their own freedom, they cannot be set free. Thus, Walzer refers to a community of nations and not of humanity that values the legitimacy of people to determine their own fate and not have universal forms of democracy inflicted upon nations.

communities as stemming from the concept of popular sovereignty, whereby the people within a community should be able to decide over their future fate.

On the other hand, sovereignty as a norm presupposes good governance and meeting the demands and obligations not only of the domestic citizens, but also of the other members of international society. The equation of sovereignty with good governance presupposes the meeting of universal human rights and needs. Sovereignty as a norm foresees the existence of a state for the benefit of its citizens and whenever it cannot deliver basic goods and services to them, it becomes the responsibility of the international community to intervene and impair the functioning of the state¹⁸.

Thus, it becomes clear that legitimizing the people and elevating popular sovereignty to the fore can imply different rights – the rights of the political community to non-intervention in its domestic affairs, due to the fact that its people are the only source of sovereignty, yet popular sovereignty can also imply defending the universal rights of the individuals within a community *per se*. Thus, there seems to be a tension between the institution (established practice of sovereignty) and the norm (rule, standard of behaviour) of sovereignty. There also seems to be a tension between state and individual sovereignty, between non-intervention and human rights. The tensions reflected in sovereignty are manifold, mirroring, on the one hand, the issue of the source of authority or legitimacy that underlies sovereignty and reflecting, on the other hand, the tension between sovereignty as an institution (affirming the rights of states) and sovereignty as a norm (presupposing obligations towards human beings), a tension which in the era of colonization would have been depicted as one between sovereign equality and the standard of civilization.

Consequently, state failure breaches on international peace and security and becomes intertwined with sovereignty. On the one hand, sovereignty has its locus within the state, in other words it is the territorial state which can be demarcated as sovereign. On the other hand, the state can exist and function properly only when it meets the demands of its own citizens and maintains friendly relations with other states in international society (practices sovereignty). Thus, sovereignty is a complicated, multi-layered concept with many nuances. It possesses an internal, as well as an external dimension. It is an ordering principle of the international society of states and yet it is not inviolable, as witnessed by the unilateral *Declaration of Independence of*

¹⁸ See Jackson (2000) and Rotberg (2004).

Kosovo. These aspects of sovereignty might not only seem confusing at times, but they might also be mutually exclusive. Thus, it is important to clarify the roles and functions of sovereignty. The two concepts of state failure and sovereignty seem to be caught in a vicious circle. There would be no state failure without the norm of sovereignty (implying that the people are sovereign and have basic rights that need to be protected by the government). Yet, the sovereignty norm is limited by sovereignty as an institution due to the institutionalization of rules and practices of territorial integrity and non-intervention. The tension between sovereignty as an ordering principle of the Westphalian state system and sovereignty as a norm, representing the demands of the people, is also a starting point of the current study.

In fact, this study argues that in a different period of history, many of today's weak or failing states would not have been perceived as such had it not been for the changed prism of evaluation not only of state sovereignty, but also of state failure. If sovereignty were not deemed as a responsibility, as well as an entitlement to enter into relations with other states, if the concept of human security had not been underlying many of the post-Cold War initiatives of the United Nations, stressing the importance of the human individual *per se* and the pertaining to it human rights, then sovereignty today would probably still be cloaked under the veil of absolute power, emphasizing the inviolability of borders and the principles of territorial integrity and non-intervention in the domestic affairs of states.

This study argues that the international arena, within which UN TAs are discussed, has significantly changed in the past twenty years since the end of the Cold War. It is due to this conceptual and paradigmatic change that one is able to write about sovereignty as responsibility and not merely power, self-interest or survival in an international context.

State failure and sovereignty resemble the myth of the phoenix – out of the ashes came rebuilt not only a new state, but a sovereign one. In fact, this is what most transitional administrations and peacebuilding efforts in the world attempt to do – they try to construct states where none had previously existed – institutions are being built, where there was a lack of such, people are being trained with regard to what their rights and obligations in a sovereign state entail. This study addresses the questions of whether and what type of nexus exists between sovereignty and state failure and between sovereignty and local ownership, it ponders on the right balance between

local involvement and international peacebuilding, and attempts to demonstrate how well the root causes to conflict and violence in a society have been tackled by international peacebuilding exercises under the auspices of the UN TAs. In other words, this study illustrates how local perspectives, interests and capacities matter and impact on the success of UN TAs.

2.1.1 Changed perceptions of state failure threats

It has been argued that state failure has not only changed the concept of sovereignty, but also that of distribution of power in international relations. Ironically today's powerful states in the world feel threatened not by other powerful states, but by the weak, the vulnerable and the failed ones¹⁹. Condoleezza Rice's observation redirects the analysis of failed states from a macrosystemic level to a local and national one by emphasizing the importance of the regime characteristics present in a country. The 'new world' that Rice describes reiterates the idea that failed states matter for reasons pertaining to international, as well as national peace and security²⁰, as Hamre & Sullivan (2002: 85) note, unattended failed states may become 'sanctuaries' of organized crime and terrorist networks.

Thus, failed states pose a threat to international peace and security. In a post-9/11 world order, however, failed states are additionally portrayed as directly threatening national peace and security²¹. In contrast to the early post-Cold War peacebuilding initiatives in Somalia, Cambodia, Namibia, Bosnia-Hertsegovina, Kosovo and

¹⁹ US Secretary of State Condoleezza Rice (2005), elaborates that the greatest threats today come from weak rather than strong states:

Today ... the greatest threats to our security are defined more by the dynamics within weak and failing states than by the borders between strong and aggressive ones. Weak and failing states serve as global pathways that facilitate the spread of pandemics, the movement of criminals and terrorists, and the proliferation of the world's most dangerous weapons. Our experience of this new world leads us to conclude that the fundamental character of regimes matters more today than the international distribution of power.

²⁰ An observation also strengthened by Malek (2006: 69), who quotes the report of the U.S. Commission on National Security/ 21st Century (2000) which listed failed or weak states as one of the six security challenges for the US in the beginning of the 21st century; after 9/11 this position became even clearer: "America is less threatened by conquering states, than ... by failing ones".

²¹ Hehir (2007: 309) suggests that there are two reasons pertaining to intervention in failed states: a moral and a security-oriented argument. The moral argument manifested itself prominently in the 1990s with the discourse on humanitarian intervention and the responsibility to protect, which was seen as being incumbent not only upon states towards their own citizens, but also upon states with the capacity to 'save strangers'. The security-oriented perspective was basically driven by national interest and for the author post-9/11 both perspectives have coincided. In contrast to the major statements produced, Hehir has argued that the perceived threat failed states pose to international peace and security is over exaggerated.

East Timor undertaken for humanitarian reasons, in a post-9/11 world order peace-building is driven by concerns pertaining to national peace and security as well, as in the cases of Iraq and Afghanistan²².

This study views both Kosovo and East Timor as representing the post-conflict dimension to failed states²³, since the work of the UN TAs in both regions resembled failed state reconstruction in the sense that institutions needed to be created from scratch (due to the lack of independence and almost no self-governing experience). This study views the concept of failed states as applicable to the cases of Kosovo and East Timor and as an overarching concept to include post-conflict reconstruction. The next section clarifies what sovereignty and state failure entail.

2.2 State failure in a post-Cold War era

Having outlined the changed threat perception post-9/11 it has become obvious that the international system aims more than ever to be surrounded by peaceful and well-functioning states, based on the principles of good governance. Yet, there can be various approaches to what constitutes a functioning state and in this respect as to what constitutes a failed state. Due to the variety of definitions accorded, there have also been diverging views as to what kind of a state needs to be created.

2.2.1 Contractarian, Weberian and Juridical views of the state

One cannot analyse a failed state, without beforehand mentioning what constitutes a state. Von Einsiedel (2005: 15) claims that there are three dominant conceptions of the state: Firstly, the state can be viewed in terms of the social contract tradition of Hobbes, Locke and Rousseau. This view puts special emphasis on the relation between state and society, implying not only a submission of the society members to the state,

²² This message has also been uttered by the Crisis Management Initiative, CMI/ IPA, (2004: 6):

Failed states are first and foremost humanitarian disasters, where the main victim is the local population. However, failed states are no longer “only” humanitarian disasters; they are also becoming an increased threat to international peace and security, since they destabilize neighbouring states, and because they are increasingly becoming safe havens for international crime and terrorism. Nevertheless, despite all the technological advances and quick military victories, it appears that these wars cannot be won by military means. Winning wars against failed states can only mean making them into well-functioning states.

²³ Please note that Patrick and Brown (2007) defined post-conflict reconstruction as one type of failed states measures. For more detail refer to the section *Difficulties of Failed States Measurement*.

but also a responsibility on behalf of the state to deliver services to its members, most notably security, but also social justice, secondly, the Weberian approach to the state (based on Max Weber's definition of the state as a 'corporate group that claims to monopolize the legitimate use of force over a territory') emphasizes the state's ends rather than means and thirdly, the juridical approach focuses not on the *de facto* attributes of a state, but on its juridical statehood. Juridical statehood is defined by Article 1 of the Montevideo Convention (1933), whereby the core of the state is seen as being constituted by four classical criteria²⁴:

The state as a person of international law should possess the following qualifications: (a) a permanent population, (b) a defined territory; (c) government and (d) capacity to enter into relations with the other states.

The three approaches to statehood emphasize different spheres of statehood. For contractarians the political sphere is extremely important since it is within the political process that the relationship between the state and society is shaped. Weberians emphasize the importance of (external) security and the juridical view of statehood stresses the importance of the rule of law. More importantly, the three views of the state emphasize different sources of authority that permit a state to govern over its citizens: the social contract, security or rule of law. The source of authority, legitimizing governance for and on behalf of the governed, defines in essence a functioning state. Without legitimate authority a state would simply be an edifice without substance, an edifice that resembles a failed state.

2.2.2 Types of state failure

In line with the different approaches to statehood that one can undertake, there can also be delineated numerous definitions of state failure. Many of the definitions of failed states refer to at least one of the three above-mentioned approaches to defining a state in contractarian, Weberian or juridical terms. However, since most of the definitions aim to be as all-encompassing as possible, they often bridge social contract views of the state with Weberian and juridical ones.

²⁴ Quoted in Crawford (2007: 45) and von Einsiedel (2005: 15).

2.2.2.1 Contractarian, Weberian and Juridical state failures

It has been hard to find definitions of state failure that adhere strictly to the different approaches to state formation – Contractarian, Weberian and juridical. Instead, most authors have been crossing the lines, trying to provide all-encompassing definitions that incorporate functions of the state as defined by the social contract tradition and Max Weber, which sometimes has an influence on its juridical structure.

Congruence amongst authors depicts as one of the main functions of the state its ability to ‘successfully deliver goods and services’ to their populations (Chabal, Clapham et al. 2004:4). Thus, according to Rotberg failed states are those unable to deliver basic political goods and services to their population, breaching upon the social contract, establishing states in the first place (Rotberg 2004: 2-3)²⁵. Rotberg (2004: 3) establishes a hierarchy of political goods that according to him are crucial for a functioning state, whereby the most important political good is human security, followed by free and open participation in the political process, as well as provision of medical and health care, education, railways, roads, harbours and other physical infrastructures. In this sense Rotberg seems to be referring not only to political, but social and economic goods as well²⁶.

For Jackson (2000: 295) failed states cannot or will not safeguard minimal civil conditions for their populations: domestic peace, law and order, and good governance. According to Jackson (2000: 296) such states have an international juridical existence but very little domestic political existence. Kreijen (2004: 84) states that a failed state is unable to provide its citizens with the ‘good life’²⁷.

However, Pauly & Grande (2005: 4) have depicted the notion of a failed state

²⁵ It is interesting to note that both Jackson (2000) and Rotberg (2004) mention the provision of basic political goods as a main trait of functioning states.

²⁶ Weiss and Hoffman (2005: 296) stress economic and social goods as pertaining to state failure, describe a collapsing and failed state as one ‘unable to provide food, shelter, sanitation, health care and physical protection’.

²⁷ Since ancient times the aim of human beings has been to live well, to lead a good life. As Aristotle famously stated, the aim of politics is to achieve a ‘good life’. For Hobbes a ‘good life’ is a secure life (See footnote 21). The reason why interim authorities are imposed in failed states is to enable through capacity-building in the respective country to provide a ‘good life’ for its citizens and in so doing to protect the ‘good life’ of the citizens of the rest of the world. The debate concerning TAs is not centred on what constitutes a good life, but is concerned as to whether an outsider can decide as to what the pursuit of the ‘good life’ in another country should be. In other words, the problem does not lie with the final destination – as this study presumes that all human beings pursue a good life, but with the process of pursuit and optimizing the process of pursuit.

as a misnomer, since it is not the idea of the state *per se* that has failed, but only specific structures of the state. In this respect the authors (Pauly & Grande 2005: 11) deem the relationship between state and society to be important since it represents the internal dimension of sovereignty and is the locus of those internally defunct structures that need to be reconstructed.

Wilde (2008: 261) has ascribed state failure to liberal conceptions of the state and sovereignty, according to which an entity is sovereign only if its internal governance is liberal, thus, categorizing illiberal governance as state failure.

Hamre and Sullivan (2002: 2) have emphasized all three types of state failure: for them a failed or failing state is one that no longer has a central functioning government (in juridical terms), such as Somalia, or those states that no longer control major parts of their territory (in Weberian terms), such as Pakistan, or those states that are no longer able to provide even the most basic needs to the vast majority of their population (in contractarian terms), as is the case with some African countries. According to estimates failed states today comprise 15% of the world's countries and therefore, the authors are sceptical if a 'one size fits all' approach can be used to address the broad diversity of cases (Hamre & Sullivan 2002).

Tetzlaff (in Rossbacher 2004: 280-1) has classified four types of state failure according to the underlying causes: territorially defined state failure, resources-defined state failure, state failure due to 'bad governance' and state collapse due to the inability to exercise monopoly of power and rule of law.

Consequently, although numerous writings and classifications on types of state failure exist, it remains unclear whether the remedy to all those different types of state failure should also be different, or inherently the same. In fact the problem is that no congruence amongst authors exists as to what would be a successful treatment of state failure since there is no congruence as to what constitutes a state failure. It is interesting to note that the different approaches to statehood and state failure have not impacted upon peacebuilding in reality. Instead, an observable unified model of a 'one size fits all' approach has been developed to cater simultaneously for contractarian, Weberian and juridical aspects of state failure. This approach has also been emphasized by Chesterman (2005a: 157), arguing that if the state is understood as a social contract, then state failure is the incapacity to deliver basic goods, if the state is understood in Weberian terms (as the capacity to exercise a monopoly on the

legitimate use of force in its territory) state failure refers to a breakdown of government structures and if a state is understood with reference to its legal capacity, then state failure can be conceived as the incapacity to exercise such legal powers effectively. However, for Chesterman (2005a: 157) such definitional divisions can be misleading since it is not the state *per se* that has failed but its government or individual leaders and as such the remedy for a failed state according to Chesterman needs to cater for government and not state failure. Thus, it is not so important what the background of state failure has been, the remedy prescribed to its broken institutions has always been in terms of good governance, liberalism and democracy promotion.

2.2.2.2 External and internal dimensions of state failure

Apart from referring to the contractarian, Weberian and juridical characteristics of a state and subsequently, state failure, authors have also described state failure according to internal and external characteristics.

William Reno has introduced the concept of the 'shadow state', implying that a state can be hollowed out from within what concerns the state institutions due to personal rule hiding behind the *façade* of juridical sovereignty (quoted in von Einsiedel 2005: 19). Thus, although in possession of juridical sovereignty a state can be lacking in internal sovereignty. This phenomenon has also been observed by Robert Jackson (1990: 168) who has claimed that juridical sovereignty (*de jure* right to governance) does not always translate into empirical sovereignty (*de facto* governance) and in those cases where these two dimensions of sovereignty do not coincide 'quasi-states' have been observed. For Jackson 'quasi-states' (1990: 71, 30) occurred as a result of decolonization, whereby the old sovereignty game restricted to notions of positive sovereignty (capability to govern oneself) and the 'sacred trust of civilization'²⁸ was replaced by notions of negative sovereignty (freedom from outside interference). It is with decolonization that a shift occurred from law between 'civilized states' to law between 'sovereign states' (Schwarzenberger quoted in Jackson 1990: 75). Thus, the abolishment of the 'sacred trust of civilization' refuted the paternalistic notion of tutelage and hierarchy between states by embracing the right

²⁸ Claude (quoted in Bellamy et al. 2004: 231), claims that the Berlin Conference (1885) and the Brussels Conference (1890) codified the idea that the colonial powers hold a paternalistic 'sacred trust' over their colonies.

of sovereign equality. However, with the return to a discourse on failed states in the 1990s and conditionality, i.e. good governance as a pre-condition to attaining independence, as witnessed in Kosovo, Bosnia-Hertsegovina and East Timor, Chandler (2006) has argued that one has returned to notions of positive sovereignty, establishing a renewed hierarchy of states.

On the basis of internal and external sovereignty, authors have also distinguished between internal and external state failure, where the former involves the relationship between the state and its population and the latter refers to the relations between the state and other international states (Kreijen 2004: 84).

Zartman (1995: 5) has linked state collapse to the concept of legitimacy, stating that a failed state has lost its legitimacy and the right to command and conduct public affairs and, thus, in end effect it **'has lost the right to rule'**. With this statement Zartman invites the international community to intervene and take charge of state reconstruction and the provision of basic goods and services²⁹. A point also reiterated by the International Commission on Intervention and State Sovereignty Report (2001: 17), whereby the primary responsibility to protect is given to the state concerned and only in those cases, where the state is 'unable or unwilling to fulfil this responsibility' does the international community have the right to act in its place³⁰. Thus, despite the various accounts of what constitutes state failure, there has been no congruence upon its measurement indicators.

2.2.2.3 Difficulties with state failure measurement

Patrick (2007: 647) and Kleinschmidt (2008) refer to the incongruence of failed states measures and indices and the competing set of indicators that overlap imperfectly³¹.

²⁹ Zartman (1995: 269-270) argues that for legitimacy to be restored constructive participation is required for in failed states 'power structures must be reconstituted, from the bottom up'.

³⁰ According to the ICISS Report (2001, Article 2.33), the entire focus has shifted from the 'right to intervene' to the 'responsibility to protect'. Chandler (2006: 31) notes that the notion of intervention was human-centred, whereas the present 'responsibility to protect' principle is state-centred – a project that is undoubtedly much harder to execute in terms of state reconstruction and capacity-building than a mere prevention or reaction to human suffering and injustices. Zaum (2007: 226) concludes that in order to be legitimate, sovereign authority needs to be recognized by both international and domestic society, this requirement of legitimacy imposes 'a set of responsibilities on the state - vis-à-vis other states, but in particular vis-à-vis its own population'.

³¹ Patrick (2007: 647) argues that a lot of countries are being grouped together and labelled as 'failed' irrespective of the regime that they have at home, the failed state syndrome also ignores the fact some states, particularly in Africa, were never really designed to be effective and lastly, the *Failed States Index* (2006) produced by the Fund for Peace offers a competing set of indicators that overlap only imperfectly with Rotberg's indicators of state failure, including large-scale refugee movements,

Patrick (2007: 649) emphasizes that all of the proposed measures of state weakness tend to establish a link between weakness, poverty and political violence, however these methods are not transparent with regard to data collection and they suffer shortcomings by either focusing on the extreme cases of collapse or attempt to measure all inherent weaknesses by overemphasizing some aspects of weakness and undermining others. Instead, Patrick (2007: 652) suggests measuring state weakness by linking capacity and will in developing countries: those states that have a strong will and high capacity are relatively good performers (Senegal), those having a weak will, but strong capacity often become corrupt and repressive (Zimbabwe, Burma), those having low capacity but a strong will (Timor-Leste) are viewed as weak but willing states and those in possession of low capacities and a weak will are weak states (Sudan, Haiti prior to 2006). For Patrick & Brown (2007: 1) state failure³² is simultaneously a development challenge and an increasing threat to global security. In fact, the problems relating to the measurement of state failure stem also from the incongruence amongst authors as to what constitutes sovereignty.

2.3 Gradations in sovereignty

The term 'gradations in sovereignty' has been coined by Keohane (2003: 286) and it depicts sovereignty as a variable and not as a constant. This term is used in the current study to depict the various levels and nuances attributed to the meaning of sovereignty. Research has illustrated that at the core of the sovereignty concept rests the issue of

mounting demographic pressure, inequitable economic development, sharp or severe economic decline, the rise of factionalized elites. In the 2004 Report of the Commission on Weak States and US National Security classifies 50-60 countries as weak due to their inability to provide physical security, social welfare and legitimate institutions (Patrick 2007: 648). The *Country Indicators for Foreign Policy* (CIFP) project of Carleton University in 2006 measures a state's ability to provide basic governance functions according to 74 indicators. In 2005 Ghani, Lockhart & Carnahan proposed a '*sovereignty index*' to measure how far a state is from performing its basic functions with emphasis on financial and economic components. Britain's Department for International Development (DFID, 2005) has produced a list of 46 fragile states and in 2006 USAID produced a document entitled *Measuring Fragility: Indicators and Measures of Rating State Performance* which proposes 33 indicators to measure the capacity and legitimacy of state institutions in four spheres of governance: security, political, economic and social (Patrick 2007: 649).

³² Patrick & Brown (2007: 5), classify the following states as failed: 1) endemically weak states that pose no major risk of conflict, 2) resource-rich performers, which have the financial capability but are often corrupt and autocratic, 3) deteriorating countries – suffering a marked decline in institutional performance with an increased risk of violence and 4) societies in the throes of crisis, 5) post-conflict societies, 6) brittle dictatorships and 7) reform-minded governments. According to Patrick and Brown's classification, the reconstruction of post-conflict societies (Kosovo and East Timor) represents one type of state failure, a notion employed by this study as well.

authority (exercise of supreme authority within a given territory³³) and sources thereof. Simply put: ‘to govern, whether as structure or function, is to exercise authority. To have authority is to be recognized as having the right to govern, to issuing directives or requests that are heeded by those to whom they are addressed’ (Rosenau 2004: 32). In other words, Rosenau draws on the importance of authority and the stemming from it compliance, when discussing sovereignty and governance. In essence, a functioning and peaceful state has as its cornerstone authority, which defines sovereignty as belief therein.

2.3.1 Sources of authority

The previous section on state failure in a post-Cold war era has illustrated that the different conceptions of a functioning state and failed state rest on different understandings of authority that legitimize government. The authority to govern is viewed as constituting sovereignty. Thus, the question of what constitutes a sovereign state (functioning and peaceful state) has been shaped by the issue of where does authority stem from.

2.3.1.1 Social contract theory

Much of the discussion on sovereignty goes back to the doctrine of natural rights, whereby natural rights were deemed to be universal, belonging equally to all human beings (Plattner 2008: 40). The doctrine of natural rights set up the background, within which the social contract took place.

The social contract theory postulates that political orders derive their legitimacy only from the consent of the parties to the social contract who erect such a contract in order to protect their ‘life, liberty and estate’ (Locke 1690). The early social contract theories referred to a ‘state of nature’ among the different societies, however, Kant’s *Perpetual Peace* started to internationalize the doctrine of human rights by introducing the idea of the federation of republican (representative) governments that are conducive to peace³⁴ (Plattner 2008: 41).

³³ Definition employed by the early classical writers on sovereignty and later adopted also by Krasner (In Zaum 2007: 3).

³⁴ According to Plattner (2008: 41) Kant builds on the distinction made by Jean-Jacques Rousseau between natural liberty and moral/civil liberty and introduces the principle of the universal human morality – the ‘categorical imperative’, meaning that we treat individuals only as ends and not as means to an end. Thus, the rights of other human beings need to be respected for failure to do so would mean to

The sovereignty doctrine thus married the two concepts of liberalism (constitutional or limited government based on the rule of law and the protection of individual liberties) and democracy (the selection of government officials by universal suffrage) in contractarian terms (Plattner 2008: 59). As Plattner notes liberalism is needed to protect the freedom of citizens and democracy is needed to ensure the equality of all citizens³⁵, thus Plattner (2008: 107) concludes that it is Bodin³⁶ and Hobbes who established the doctrine of sovereignty, which states that ‘all political power ultimately derives from the consent of the naturally free and equal individuals’.

Plattner (2008: 112) links sovereignty to territory by claiming that for ‘democracy to work, there must be an overarching political order to which people feel they owe their primary political loyalty – in short, a state, with clear boundaries and clear distinctions as to who does and who does not enjoy the rights and obligations of citizenship’.

Additionally, Plattner (2008: 113) refers to the ‘unstable compound’ of liberal democracy, whereby the liberal/cosmopolitan element emphasizing the universal human rights of the individual is in tension with the particularistic/democratic demands of the community. This is a tension between a cosmopolitan type of democracy based on individual human rights and the communitarian type of democracy based on a collective right to democracy (self-determination).

This tension is also witnessed in contemporary peacebuilding endeavours for they take place outside the political sphere and as Manent (quoted in Plattner 2008: 114) notes the democratic principle of human freedom and equality can be turned against the state and once it breaks away from the nation-state, it turns against the political life as such (for political life requires that the political community be sovereign and establish the laws under which communities operate). In essence, for Manent it is the political community and not the individual that is sovereign and the

treat them as means and therefore, would be morally impermissible. Furthermore, human beings are rational beings capable of obeying the human law.

³⁵ According to Plattner (2008: 61) in the *Second Treatise of Government* John Locke describes man’s state of nature as not only one of ‘perfect freedom’, but a ‘state also of equality’, meaning that if men are not equal in their natural rights – that is, if some men have the right to govern over other men – then, men are not really free and correspondingly, if men are naturally free then none can have a natural right to rule over all others.

³⁶ Keohane (2003: 283) observes that for Bodin sovereignty was indivisible and it was agency-based (the sovereign body was endowed with supreme authority to make the rules). In democratic theory, by contrast to absolutist theory, ‘sovereignty is rule-based’, thus, one cannot define a sovereign unless one has previously set out the rules. Rules precede sovereignty as stated by Friedrich von Hayek (quoted in Keohane 2003: 283).

author warns of the dangers associated with apolitical democracy. However, apart from resting on freedom and equality, sovereignty can also be linked to security.

2.3.1.2 Security and sovereignty

Jackson (2006: 15) notes that a discourse on security is closely linked to that of sovereignty (from Latin *securitas* means freedom from care or safety)³⁷. For Jackson (2006: 28) a cosmopolitan right to security means that the suffering of people in one state will threaten the edifice of international peace due to their interconnectedness. Jackson (2006: 30-4) states that sovereignty and security have become separated in the domestic sphere of failed states or ‘quasi-states’, for it is only when the people *per se* are sovereign and are exercising their right to self-rule and self-determination that a liberal democracy exists. For Jackson (2006) trusteeships are illiberal creations that are not sovereign from the democratic basis of popular sovereignty and therefore, exercise a type of paternalism.

However, sovereignty developed also as a response to security concerns not within, but between states, emphasizing not the internal security of their citizens (as the contractarians did), but the external security of states themselves and their equality amongst each other in terms of freedom and the exercise of unrestrained domestic jurisdiction. Following the Peace of Augsburg of 1555 the principle of *cuius regio, eius religio* was established, allowing German princes to enforce their own faith within their territory, thus, paving the way for the establishment of the Westphalia system of sovereign states in 1648, which declared the interference in other state’s governing prerogatives as illegitimate. Non-intervention, grounded in the principle of sovereignty, came to be considered as the *Grundnorm* of the Westphalian international system that still exists to this present day³⁸.

³⁷ For Jackson (2006: 18) Hobbes justifies the sovereign state by stating that safety does not simply imply ‘survival in any condition, but a happy life so far as that is possible. For men willingly entered commonwealths which they had formed by design in order to be able to live as pleasantly as the human condition allows’ – thus, a good life makes happiness attainable and a good life is a secure life; Hobbes propagates domestic peace and protection against war through sovereignty or supreme power of the protector (the state).

³⁸ However, scholars of the English School such as Hedley Bull have stated that ‘no serious student can fail to feel that intervention is sometimes justifiable’ and that ‘there are exceptions to the rule of non-intervention’ (Badsey & Latawski 2004: 127). As Higgins claims ‘In any system of enforcement there must be an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other’ (quoted in Jackson-Preece 2001: 1).

Thus, one can identify two different and clear stands to the development of statehood and sovereignty, the first one has developed in line with the social contract theories focusing on the internal security and happiness of the citizens of a state and the second one has been Weberian in nature – focusing on the ability to exercise control within one’s territory arguing for non-intervention and the inviolability of borders. If the contractarian strand has been more concerned with individual equality and freedom, the Weberian strand has been preoccupied with security. These two strands have two different sources of authority – the internal dimension focuses on authority from within stemming from the people that are sovereign and external sovereignty focuses on authority from outside stemming from the power of states. However, authors have been sceptical as to how clear-cut any type of distinction can be. Krasner (1999: 24) has suggested that in reality calculative behaviour has always trumped the existence of norms and although the Westphalian norm of non-intervention existed – it was more of an ‘organized hypocrisy’ arrangement, rather than a rule applicable at all times³⁹. To the two identified sources of authority and the resulting clashes between the norms of non-intervention and human security, authors have added a palette of norms.

2.3.1.3 Norms of sovereignty

Zaum (2007: 3) contends that sovereignty is not a single norm, but an institution comprising several sometimes conflicting norms and is associated with a bundle of priorities, such as territory, population, autonomy, authority, control and recognition.

However, Zaum (2007: 5) also sees a tension in the sense that ‘the international community considers its conception of legitimate and legitimizing institutions to be universally acceptable, while the notion of autonomy inherent in the concept of sovereignty suggests the opposite: there can be different sources of legitimate authority in different societies’. Thus, for Zaum the idea of promoting universal good governance, democracy or liberalism contradicts the individual idea of autonomy underlying sovereignty. In this respect Zaum (2007) refers to the pluralist-solidarist debate of the English School of International Relations, contending that traditional

³⁹ Ferguson & Mansbach (2004: 21) argue that post-international theory recognizes the decline of the state; As Westphalian states erode and reveal themselves as incapable of meeting citizens’ basic needs and demands, their authority diminishes, and as authority diminishes so does state capacity, thereby producing a downward spiral in which citizens come to identify with other authorities who claim that they are able to cope where states cannot.

sovereignty has defended and espoused diversity within the domestic realm under a juridical shield of sameness and equality (be it *cuius regio, eius religio* or Article 2(7) of the UN Charter). However, with the espousal of the R2P principle, movement towards a more unified world, based on universal norms such as good governance, democracy and liberalism is taking place.

Zaum (2007: 27) acknowledges that the establishment of international administrations and the denial of self-governance to the affected populations compromises one of the principle aspects of sovereignty, namely the norm of self-determination and names it the 'sovereignty paradox'. The author further identifies five key elements of a new standard of civilization⁴⁰ (a sign of moving back to the notion of empirical statehood) which promotes a broadly liberal view: 1) administrative effectiveness; 2) human rights; 3) democratisation; 4) rule of law; 5) the establishment of a free market economy (Zaum 2007: 40).

Additionally, it has been stressed that underlying divergent approaches to states and state failure has been the issue of sovereignty and the defining it conception of authority to rule. Thus far the traditional conceptions of sovereignty, state formation and state failure have been outlined. The following sections concentrate on conceptions of sovereignty that move beyond the traditional realm in order to accommodate rule by an external power in a failed state.

2.3.2 Shared sovereignty

The previous sections have addressed the questions of what is a state, what types of state failure stem from a state and what comprises state sovereignty. By tracing the development of the sovereignty doctrine it has become obvious that sovereignty not only emanated from the Westphalian state, but also filled the state with substance and thus ensured its existence for the basic pursuit of individual 'life, liberty and estate'⁴¹.

There have been opposing views voiced by authors as to whether the good life can be pursued in a framework of dependence, in the absence of sovereignty. For Jackson (2000: 308) sovereignty is no guarantee of domestic well-being, it is merely the framework of independence within which the good life can be pursued. On the

⁴⁰ In this light Zaum (2007: 37), remains critical of the concept of sovereignty as responsibility, claiming that even in Western states 'the notion of sovereignty as responsibility does not seem to have evolved to the extent that all human rights violations, and in particular a right to democratic governance necessarily justify military intervention'.

⁴¹ John Locke (1690), *Two Treatises of Government*.

contrary, for Crawford (2007: 32) sovereignty is merely an attribute to states, and not a precondition for independence tied to obligations.

The concerns of how to pursue the good life of the citizens in the absence of sovereignty have prompted authors to distinguish between different levels of sovereignty. Keohane (2003: 286) distinguishes between external and domestic sovereignty, arguing that humanitarian intervention limits the former, but restores the latter. According to Krasner (1999: 3) there are four different connotations to sovereignty: international legal sovereignty (mutual recognition between states), Westphalian sovereignty (the exclusion of external actors from authority structures within a territory), domestic sovereignty (the ability to exercise effective control within borders) and interdependence sovereignty (regulates the flow of ideas, goods, people, capital and information across the borders of the state).

Krasner (2004: 108) refers to the phenomenon of ‘shared sovereignty’ in trying to bridge the concerns that TAs attempt to build functioning states without possessing sovereignty, by claiming that external actors are engaged in the domestic authority structures of the target state to improve its domestic sovereignty by compromising the Westphalian sovereignty and using its international legal sovereignty in order to enter into agreements. Thus, in the Kosovo case Krasner (2004: 42) foresees an exit strategy that maintains domestic sovereignty by bypassing Westphalian sovereignty (right to self-governance) and moving from ‘limited’ sovereignty (under international guidance) to ‘integrated’ sovereignty within the European Union. Other scholars have depicted the emphasis on domestic sovereignty at the expense of Westphalian sovereignty in terms of a positive/ negative dichotomy.

2.3.2.1 Positive and negative sovereignty

The positive/ negative dichotomy of sovereignty has been constructed by Jackson (1990: 6) who juxtaposes the idea of conditionality of sovereignty (positive dimension), which suggests a ‘sacred trust of civilization’ to be fulfilled before sovereignty can be conferred to a territory, with a negative dimension of sovereignty, implying that the *Grundnorm* of international relations is sovereign statehood, which simultaneously prohibits foreign intervention and confers a right of independence⁴².

⁴²The current international norm of *uti possidetis juris* may be summarized as follows: 1) existing interstate borders are legitimate, legal and inviolable; 2) change of borders by force is illegitimate and illegal; 3) if borders are to be changed, all states affected must give their consent; 4) in the absence of

Thus, one is faced with the fact that after decolonization sovereignty was not 'acquired internally, but was conferred externally' (Kreijen 2004: 146). Moreover, Kreijen (2004: 154) points out that negative sovereignty contributed to an escalated 'tension between sovereignty and humanity', whereby the protection of human rights has been impeded by the negative sovereignty principle of non-intervention.

The dismantling of the 'sacred trust of civilization' through decolonization and the newly-erected system of the United Nations heralded the abandoning of the 'paternalist downside' and the embrace of the 'liberal upside that foreign powers cannot force peoples to be free' (Jackson 1990: 186). Precisely this juxtaposition between the paternalist downside approach and liberal upside approach of international relations has come to the fore of the study of the discipline with the establishment of UN-led transitional administrations, for these transitional administrations seem to be reversing the new sovereignty game to the old classical game of positive sovereignty once again.

Although the present UN system claims to be liberal and the very system initialized the process of decolonization, today we are witnessing a reversal of its liberal values to a more paternalistic approach of tutelage. In the face of the established UN TAs in Kosovo and East Timor, a paternalistic top-down approach of democratization and salvation rather than a grassroots bottom-up approach of a liberal achievement of independence and democratization is being institutionalized. Numerous authors (Caplan, Chandler, Tschirgi and Jackson) have questioned the ability of present-day UN TAs to prevent criticisms of neo-colonialism and paternalism, as well as their ability to successfully accommodate grassroots wishes and desires of government⁴³. Although the UN Charter and the ICISS Report from 2001 still claim that sovereignty does matter, a transformation within the concept can be witnessed: rather than viewing sovereignty in the classical form of 'independence' (Crawford 2007: 89), sovereignty today is referred to as 'state capacity' (Chandler 2006: 26). This trend existed during the colonial era and for authors such as Chandler (2006) it is presently enduring a revival.

general consent to change borders, if secession is to occur, international boundaries of seceding states should follow the internal administrative boundaries of the state from which they seceded; 5) ethnonations have no inherent right to self-determination, and the only recognized nation-state is the population group residing within borders defined by juridical boundaries (Jackson 2000: 328).

⁴³ See Chandler (2006) and Ignatieff (2003).

This study does not identify itself with the view, which treats TAs as a revival of trusteeship and tutelage. In fact, the study views TAs as being somewhere in between, along the spectrum of tutelage and claims that the success of such efforts is reliant on their ability to accommodate local beliefs and desires and to leave the administered region and hand it over to the local population. In contrast to the previous colonial system, whereby the colonial interests had a role to play, in the present structure of transitional governance, no such colonial and one-sided interests can be identified. Indeed, the success ingredient that this study prescribes relies upon the ability of such transitional governments to realize that they exist for the local population and are there to defend its interests.

2.3.2.2 Earned sovereignty

A return to positive sovereignty and the pre-decolonization era is also witnessed by Biersteker (2002: 163), for whom the commitment to ‘conditioned sovereignty’ synthesizes two general notions of sovereignty – the limited Weberian notion implying territorial control, legitimate means of coercion and ability to extract resources and the Rousseauian notion of a recognized state as being an expression of the general will⁴⁴. Thus, Biersteker views the elevation of democratic governance as an important criterion when describing ‘conditioned sovereignty’. Democratic governance is not only the Rousseauian representation of the will of the people, but also territorial control and in this sense it often requires international help.

However, Knoll (2005: 658) has challenged the exercise of ‘earned sovereignty’ in Kosovo’s *Standards before Status* policy, claiming that exhorting norms of good governance and minority protection without any real incentives does little to change behaviour in post-conflict settings and in end effect leads to a freezing of the conflict, rather than its resolution. Thus, Knoll propagates the exercise merely of territorial control rather than a generation of political will.

Sörenson (2000: 110) has taken the debate about sovereignty a step further by contrasting the premodern state (which rests on a juridical shell of sovereignty with

⁴⁴ Biersteker (2002: 163) further points out that democratic governance has increasingly become a prerequisite for state recognition, e.g. in its 1991 declaration on the ‘Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union’ the European Community required commitments to the rule of law, democracy and human rights, as well as guarantees for the rights of ethnic minorities, commitments that were later endorsed in the ‘New World Order’ statements by the Bush administration and practices of the Clinton administration in the 1990s.

substantial political, economic and military capacities) with the postmodern state (where sovereignty is no longer vested in the state, but in a political space that is non-territorial in its basis, e.g. the EU).

2.3.3 Summary

To summarize, there are various nuances and gradations in sovereignty that are witnessed simultaneously in the present world order and are interrelated. Firstly, there is a tension with regard to the sources of sovereignty and the question of who is sovereign (on the one hand this is a tension between the state and the people, on the other hand, it is a tension between the people as a political community and the people as an aggregate of individuals). Secondly, there is the tension referring to the substance of sovereignty: should it be earned and be conditional or should it be an inalienable right. Finally, there is the paradox that external peacebuilders get involved in a local conflict in order to restore a Rousseauian type of sovereignty (make the people free and confer back to them their right of self-governance) whilst using Weberian methods of territorial control⁴⁵. In other words, contemporary TAs trump over negative sovereignty (right to non-intervention) in order to create a positively sovereign state (one which meets the basic needs of the population), using negative methods (territorial control). This study investigates whether such an approach can work and if not what should be altered. As a starting point, the *Responsibility to Protect* (R2P) principle is investigated, which represents the theoretical framework and legitimating basis for many current peacebuilding initiatives in the world.

2.4 The *Responsibility to Protect* (R2P) and its critics

Similar to the debated concepts of ‘earned’ and ‘conditioned’ sovereignty, the R2P principle has not been free from dilemmas and tensions. The R2P principle has been set up to encourage peacebuilding measures that are to restore self-government to individuals, victims of human rights abuses by the state. In the present section attention is dedicated to both the proponents of R2P as well as its critics.

⁴⁵ Chesterman (2004) explores in a similar fashion the paradox between the ends and means of transitional administrations.

2.4.1 Collective security

The background to the *Responsibility to Protect* principle is the collective security idea reiterated by the United Nations Charter at its creation in 1945, namely ‘to save succeeding generations from the scourge of war’ (Preamble, UN Charter). Despite his sudden death in April 1945, the never-delivered address of President Roosevelt to the United Nations Conference on International Organization contains the following words⁴⁶:

The work, my friends, is peace; more than an end of this war – an end to the beginning of all war; ... as we go forward toward the greatest contribution that any generation of human beings can make in this world – the contribution of lasting peace – I ask you to keep your faith.

Thus, the aim of a system of collective security is to promote security for all its members and as reiterated in 2004 ‘any event or process that leads to large-scale death or lessening of life chances and undermines states as the basic unit of the international system is a threat to international security’ (High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* 2004: 2). According to the Report of the High-Level Panel on Threats, Challenges and Change (2004) there are six clusters of threats to international security: economic and social threats, inter-state conflict, internal conflict, nuclear, radiological, chemical and biological weapons and terrorism and transnational organized crime.

According to Weiss (2006: 376) the basic idea behind the R2P doctrine is that human beings sometimes trump sovereignty as enshrined in Charter Article 2 (7) with its emphasis on non-interference in domestic affairs. According to Weiss the rationale of R2P came from Francis Deng’s ‘sovereignty as responsibility’ to help internally displaced people and Annan’s notion of ‘two sovereignties’. Weiss (2007: 89, 95) illustrates how R2P was preceded by the normative work of Francis Deng and Roberta Cohen on the issue of internally displaced persons and ‘sovereignty as responsibility’, which basically called for international access to and protection of war victims within intrastate boundaries. In 1999 Kofi Annan published a piece on the ‘two concepts of sovereignty’ claiming that human rights concerns transcend the narrow claims of state sovereignty (in Weiss 2007: 96):

State sovereignty, in its most basic sense, is being redefined ... States are now widely understood to be instruments at the service of their peoples, and not vice

⁴⁶ See *The Making of the United Nations*.

versa. At the same time individual sovereignty – by which I mean the fundamental freedom of each individual ... has been enhanced by a renewed and spreading consciousness of individual rights.

The purpose of the *Responsibility to Protect (R2P)* is to protect the collective security of mankind and to remove threats to international and national peace and security. The purpose of R2P is, thus, to ensure that effective states (well-functioning and peaceful states) provide for world stability.

2.4.2 The Responsibility to Protect (R2P)

In 2001 the *Responsibility to Protect (R2P)* principle was formulated by the International Commission on Intervention and State Sovereignty (ICISS), which stated that (ICISS Report 2001: xi):

When a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect⁴⁷.

It is stipulated that the R2P shall include three elements: 1) the responsibility to prevent - address root and direct causes that put populations at risk, 2) the responsibility to react - respond to situations of compelling human need with the appropriate measures and 3) the responsibility to rebuild - provide full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm (ICISS Report 2001: xi). UN TAs are preoccupied above all with the third function envisioned by R2P, namely the *responsibility to rebuild*.

As just cause thresholds for the R2P are seen the large-scale loss of life (actual or apprehended) and large-scale 'ethnic cleansing' (actual or apprehended) (ICISS Report 2001: xii). Moreover the intervention on behalf of the international community should have the right authority (support from the UN Security Council) and only use force as a measure of last resort. The 2004 Report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change *A More Secure World: Our Shared Responsibility* (Art. 207) establishes five criteria according to which the use of

⁴⁷ The R2P principle rests on the following foundations: obligations inherent in the concept of sovereignty, the responsibility of the Security Council in the maintenance of international peace and security, legal obligations under human rights and human protection declarations, covenants and treaties of international humanitarian law and national law, and the developing practices of states, regions and organizations themselves (ICISS Report 2001: xi).

military force can be authorized by the Security Council: seriousness of threat (genocide, other large-scale killing, ethnic cleansing or serious violations of international humanitarian law), proper purpose (motives), last resort (when all other means are exhausted), proportional means (scale duration, intensity) and balance of consequences (an estimate of whether military intervention can be successful). However, R2P's thresholds have been too high to apply to Burma or Darfur, has criticized Acharya (2006: 111).

Although R2P has been vastly criticized as undermining state sovereignty, it actually proposes nothing new in terms of the remedy – it suggests a strengthening of the internal dimension of state sovereignty with the help of international organizations. The ICISS Report reiterates (2001: 7) that sovereignty does matter for 'effective and legitimate states' can best benefit from globalization and ensure security. Thus, the ICISS Report (2001: 8) delineates sovereignty as a dual responsibility – the responsibility to respect all other states and to respect the dignity and basic rights of all the people within the state, meaning that the responsible agent is, indeed, the state.⁴⁸

The ICISS (2001: 18) argues that the R2P principle has effectively changed the debate from the 'right to intervene' to the 'responsibility to protect' and, thus, shifted the focus of discussion to the requirements of those who 'need or seek assistance', rather than the requirements of those who intervene. Yet, although the R2P might have changed the focus of attention, the substance of the debate remains still the same: what is being debated is sovereignty. The remedy proposed is still state sovereignty. Thakur (2006: 257) has argued that R2P strengthens the right of non-intervention and territorial sovereignty for the solution that it proposes – institution- and capacity-building reinstates state sovereignty once again.

In contrast to earlier notions of humanitarian intervention, designed as quick solutions to persisting problems, R2P strives towards overcoming its quick impact by formulating a responsibility to rebuild with a 'genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development', based on 'sustainable reconstruction' and 'close cooperation with local people'⁴⁹ (ICISS: 2001). Apart from being espoused by scholars, R2P has also been subjected to critique.

⁴⁸ Cortright (2008: 279) views the R2P principle as a defence of the argument that without internal peace there can be no external peace, in the words of Václav Havel: states that do not respect their own citizens cannot be expected to honour peace agreements or other citizens, nations and states.

⁴⁹ Importantly, the ICISS (2001: 45) prescribes local ownership and devolution of the responsibility to rebuild to local people:

2.4.3 The critics of R2P

The critics of R2P have been congruent in their views that the principle undermines the traditional concept of sovereignty, whereby the popular will is important. Critics of R2P have argued that by undermining the connection between state and society, the ability of a population to exercise the right to self-determination is weakened.

According to Chandler (2006: 32) state-building exercises in the post-R2P era are ironic since states are being built whilst simultaneously losing a key attribute of their sovereignty, namely self-government. For Chandler (2006: 33) a shift is being witnessed post-R2P, whereby sovereignty is redefined as a variable capacity rather than an indivisible right, sovereignty is deemed as responsibility rather than freedom (legitimizing external mechanisms of regulation that undermine the traditional right of self-government) and external domination of states is being legitimized as opposed to the voluntary contract of formally equal partners, which emphasizes the legal shell of the state, but abandons the political context of self-government and autonomy. Chandler (2006) reiterates that the conception of sovereignty as state capacity (variable quantity) as opposed to sovereignty as the right to self-government (absolute quality) creates a structure ‘of a hierarchy of sovereignty where some states are more sovereign than others’, which is in stark contrast to the understanding of sovereignty as the equal right to self-government promoted by the UN Charter⁵⁰. According to Chandler (2006: 48-51) sovereignty as a capacity, which privileges governance over government has led to ‘state-building without politics’, paying less attention to ‘how societal pressures and demands are constitutive of stable and legitimate institutional mechanisms’. In

The long-term aim of international actors is “to do themselves out of a job”. They can do this by creating political processes which require local actors to take over responsibility both for rebuilding their society and for creating patterns of cooperation between antagonist groups. This process of devolving responsibility back to the local community is essential to maintaining the legitimacy of the intervention itself...the responsibility to rebuild...must be directed towards returning the society in question to those who live in it, and who, in the last instance, must take responsibility together for its future destiny.

⁵⁰ A/RES/1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 1960 and A/RES/2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 1970, confirm the right to self-determination, which in the latter declaration has been expressed as follows (Art.1):

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

fact, since the end of the Cold War new approaches to theorizing security have stressed that politics is part of the problem rather than the solution to conflict and political and social division, stressing Foucault's inversion of Clausewitz which sees 'politics as a continuation of war by other means' (Foucault in Chandler 2006: 61), the political sphere is thus the problem to be addressed and not the sphere where solutions are to be found.

The argument that Chandler (2006) puts forward is that one cannot achieve democracy and capacity for self-government without being involved in the political process of constructing it, for such an undertaking signifies for him 'Empire in Denial' and argues for the necessity to 'unpack the black box of the failed states being rebuilt'. In a similar vein, this study unpacks the domestic realm of the states being rebuilt via TAs in order to examine what effect different local structures and actors exert on peacebuilding success.

From a similar vantage point, Bickerton et al. (2007: 26) criticize R2P by defying the constructivist understanding of sovereignty⁵¹ and arguing that it returns us to a 'hollow, legalistic conception of sovereignty, entirely defined by agreements external to sovereignty itself'. Bickerton (2007: 94) views the R2P and failed states as being responsible for a reversal of traditional International Relations (IR) theory: if traditionally 'sovereignty was the precondition for social and political order within domestic society', today it is the domestic disorder that is trying to be solved by an 'increasingly harmonious international order'⁵². In this light, Bickerton (2007: 100) criticizes Kosovo's Provisional Institutions for Self-Government (PISG) grafted by UNMIK whose Preamble relegates the 'will of the people' as only one among a number of factors to be considered by the administering UN officials and names this approach 'state-building as state failure', which exports state failure instead of besieging it.

Cunliffe (2007: 39-40) too defends the virtue of traditional sovereignty viewed as supremacy against R2P and refers not only to the external dimension of sovereignty ('no trespassing sign'), but also to the internal one based on the idea of popular sovereignty (the state exists to enforce the will of the people regardless of whether the

⁵¹ According to Bickerton et al. (2007: 35) constructivist theories aim to demonstrate how the norm of sovereignty should not be taken for granted, however, they fail to theorize the efficacy of human agency.

⁵² For Bickerton (2007: 100) sovereignty is always 'of society' for otherwise it is merely a 'theory of rule mechanistically isolated from society'.

regime is authoritarian or liberal). Thus, Cunliffe and Bickerton defend the communitarian normative principle in Walzerian⁵³ terms that there can be multiple good lives and multiple forms of self-determination that challenge the cosmopolitan conception of a 'universal approach' to the good life of the citizens. For Cunliffe (2007: 49-54) R2P denies the 'supremacy' inherent in sovereignty which leads to a violation of popular sovereignty and a loss of accountability since the author views supremacy as the essence of the expression of the popular will. Moreover, Cunliffe (2007: 54) criticizes R2P for establishing a doctrine of 'double standards': it is hypocritical to observe intervention happening in weak states when there is not a slender chance of it happening in Chechnya or Tibet due to the veto powers of Russia and China in the Security Council.

Cunliffe and McCormack (2007) go even a step further and argue that the R2P principle and the human security concept are rather a step backwards than forward, meaning that instead of besieging the state of war in McCormack's words, society and its individuals seem to be shoved back into the state of nature, where there was even higher fear and insecurity.

On the other hand, members of the ICISS Commission (Teson 2001) have professed that sovereignty and R2P are mutually constitutive and not contradictory principles for states that fail to protect the individuals within their own borders are not exercising their sovereign authority and cannot claim that external intervention is illegitimate.

2.4.4 Summary

In short, there has been a debate as to whether the general will should precede politics and whether states that are apolitically created can survive. For the defenders of the R2P principle (such as Teson and Evans) the R2P has finally created the legal framework for freeing the general will of the populations who found themselves in non-sovereign regimes. For the contenders of the R2P principle (Chandler, Cunliffe and Bickerton) state and society should not be separated, for sovereignty can only

⁵³ In this light Michael Walzer (2001: 7-8), claims:

I have never believed that there could be either a definite or a singular picture of the good life. You could tell stories of good lives. You could point to people who had lived well. You could describe a variety of good societies in movements, communities and even states. But given the immense variety of human beings and the extraordinary creativity of humanity, it never seemed plausible to think there can be one way of living, or one correct form of social organization.

emerge in the political sphere. The R2P debate is about whether institutions should precede politics or politics institutions, the issue at heart being whether the general will of the population can be shaped by socially engineered institutions or by a political process of participation. This debate between the traditional sovereigntists who see sovereignty in absolutist ways and those that view sovereignty as a variable capacity does not present an easy way to pick winners from losers. It is a debate that also bears theoretical connotations, for it refers to a traditional appraisal of the rights of human communities and a constructivist one of human rights norms on the other hand.

Elucidating on the existing debates with regard to the R2P principle, the sources of authority that define state sovereignty and state failure has helped provide a clearer picture of the background conditions that underlie and define contemporary TAs. Attention is now turned to the questions and debates with regard to what type of state needs to be rebuilt.

2.5 Governance in a globalized era

The key question when discussing good governance is ‘good for whom?’ Is governance supposed to be good for the international community or for the local population and can the two dimensions be effectively combined? Thus, the debate about sources of authority and sovereignty is continued when discussing what type of governance should be promoted in a post-conflict failed state⁵⁴. When discussing TAs and their peacebuilding exercises part of the complexity stems from the uncertainty as to whether one is referring to a government or governance. According to Rosenau (2004: 31) both government and governance consist of ‘rule systems’ or ‘steering mechanisms through which authority is exercised in order to enable the governed to preserve their coherence and move towards desired goals’, however whereas government refers to formal steering mechanisms, governance refers to formal and informal steering mechanisms.

In the literature TAs and their peacebuilding activities have been depicted as both governance and government. Chandler (2006) has viewed TAs more in the light

⁵⁴ For the traditional sovereigntists such as Cunliffe (2007) and Bickerton et al. (2007) good governance would denote above all ‘local solutions to local problems’, solutions stemming from within. For defenders of R2P and conditioned sovereignty (Paris 2004) good governance would entail above all good institutions and the rule of law, rather than a reign of the local population.

of governance, which according to him is a problematic concept that undermines the role that political culture and politics play in building a functioning state. Other scholars such as Clapham (2005) have argued that TAs are more a government that is in possession of legitimacy, due to an authorization of the mandate through a UN Security Council Resolution (SCR).

Democracy and legitimacy⁵⁵ have been points of criticism towards international territorial administrations (TAs) for they have often been described as acts of ‘benevolent autocracy’ (Chesterman 2004) that are trying to install democracy without being accountable to a higher institution. In this sense it could be argued that such acts of ‘benevolent autocracy’ unleash a ‘legitimacy deficit’ and ‘governance gap’ attributed to other international organizations (Rittberger 2007b).

Risse (2002: 269) attempts to answer the question as to how global governance can be democratic and legitimate beyond the traditional structure of the nation-state by ensuring input legitimacy as the ‘participation by those concerned by the regulations’ and at the same time output legitimacy through ‘effective and enhanced problem-solving’⁵⁶. Thus, there is a nascent trend in the current literature on international institutions to focus on their inclusiveness in order to determine their effectiveness.

2.5.1 Inclusive and effective global institutions

As early as 2001 Brühl and Rittberger (quoted in Rittberger 2007b: 3) note that ‘existing international institutions based on intergovernmental cooperation have failed

⁵⁵ According to scholars the concept of legitimacy comprises three different stages: an input, a throughput and an output stage: the input dimension refers to ‘government by the people’ concentrating on the participation of multiparties and their incentive to compliance, the output dimension emphasizes ‘government for the people’ referring to the institutional effectiveness and problem-solving capacities of the institution and Zürn (2004) emphasizes the throughput, or procedural, aspect of legitimacy and the decision-making process (In Göbel forthcoming; Rittberger, Huckel et al. 2008).

⁵⁶ Risse (2002: 269) distinguishes between two positions with regards to the ‘democratic deficit’ debate: 1) the view of Scharpf, who claims that increasing democratic participation in international governance networks (‘input legitimacy’) is difficult due to the lack of a transnational ‘demos’, or a transnational collective identity, and there is no international public sphere as known from the nation-states; thus, in a transnational setting ‘output legitimacy’ has to overcome the democracy problem in international governance, but there are limits to increasing the effectiveness of and problem-solving capacity of international governance since it requires ‘positive integration’ (collaboration amongst actors with divergent interests), as well as ‘negative integration’ (market liberalization); 2) on the other hand David Held introduces the concept of ‘deliberative democracy’ which rests upon the belief that the legitimacy of the political process can be strengthened through public debate and deliberation, through the open exchange of arguments among citizens; the more inclusive networks are, their decisions transparent and subject to public deliberation, the more the democratic deficit will be reduced; this notion of deliberative democracy does not require a notion of a global ‘demos’ in terms of a strong supranational collective identity.

to respond adequately to new global challenges and to the aspirations, influence and scope of non-state actors'. The issue of failed states and their reconstruction falls in the category of these new global challenges. As a solution to such new challenges has been proposed the move towards 'inclusiveness', which in contrast to the Westphalian 'top-down' approaches of dealing with global problems, such as failed states, represents a horizontal development of 'top-down-bottom-up' ways of dealing with global problems and failed states (Rittberger 2007b: 21)⁵⁷.

The effectiveness of an inclusive institution has been described in the literature as stemming from David Easton's model of effectiveness, divided into three categories: outputs, outcomes and impacts (In Göbel forthcoming; In Rittberger, Huckel et al. 2008). Young (1999: 109) has rephrased these three categories in the following manner: outputs refer to problem-solving effectiveness, outcomes refer to process effectiveness and impacts refer to behavioural effectiveness. Similarly, Beisheim, Liese and Ulbert (2007) state that the three dimensions of effectiveness, based on David Easton's model: output, outcome and impact are all three stages, whereby the attainment of each phase is seen as a prerequisite for the achievement of the next stage of effectiveness, similar to a triggering effect.

Applying the inclusive/ effective dichotomy to peacebuilding suggests that in order to answer the research question as to whether TAs are successful in handing over power to the local population, it is not enough to analyse TAs as an institution only on the macro level (size and competence of personnel, timing, costs, etc.), but it is necessary to examine it also on a micro (local) and meso (national) level and see whether the institution *per se* is inclusive in order to foster sustainable local ownership, in contrast to stressing only the importance of an exit strategy for the international community. This scheme suggests that the international legitimacy of a peacekeeping mission (authorization through a UN SC Resolution) is not the only dimension that is important for peacekeeping. Rather, the input stage of legitimacy, described as 'government by the people', concentrating on the participation of multi-parties and their incentive to compliance, is just as important as the output stage, described as 'government for the people', referring to the institutional effectiveness and problem-

⁵⁷ Post-conflict reconstruction in failed states is an enterprise that can be seen as belonging to inclusive multi-stakeholder initiatives, for it involves at least two stakeholders of the following four sectors: states, international organizations, civil society organizations and business actors (Rittberger et al. 2004, quoted in Göbel forthcoming).

solving capacities of the institution⁵⁸. The inclusive/ effective dichotomy is in line with current studies on peacebuilding, which have focused on an ‘inclusive peacebuilding’ process and its pitfalls, a process that of lately has been depicted as ‘local ownership’ (Reich 2006, Narten 2007).

Peters & Pierre (2004: 78) also refer to the need for local participation in governance (the need for inclusiveness) for if one considers governance as a process where ‘collective interests are defined and pursued, then some degree of exchange between state and society should be expected’. Thus, if the R2P principle stresses the need for local ownership in an external manner, the debate surrounding governance forms and government in a globalized era has stressed the need for inclusive institutions that represent all the interests of the stakeholders in order to generate greater compliance and render the initiative more legitimate. The next section examines the substance of governance itself, namely it investigates good governance.

2.5.2 Good governance

According to Welch & Kennedy-Pipe (2004: 129) good governance is only a variation or specification of good government. Abrahamsen (quoted in Welch & Kennedy-Pipe 2004: 128) has similarly stated that ‘bad governance equals state intervention and good governance equals democracy and economic liberalism’. It is not to be confounded with multi-level governance, which encapsulates negotiated, fragmented and public-private arrangements as opposed to hierarchical, centralized and public-sector arrangements that pertain to the sphere of government. According to this definition it is also clear that TAs are a form of good governance/ good government promotion.

Anghie (2006: 117) argues that good governance appears to be a modern project originating in international human rights law, whose founding concept rests on the ability to govern and goes back to the era of colonization⁵⁹. For Anghie (2006: 125) all concepts such as ‘good governance’, ‘democracy’, ‘rule of law’ and ‘sovereignty’ represent a movement from West to East.

⁵⁸ In Göbel forthcoming; Rittberger, Huckel et al. (2008).

⁵⁹ Vittoria (quoted In Anghie 2006: 118) exclaimed that:

Although the aborigines in question are ... not wholly unintelligent, yet they are little short of that condition, and so are unfit to found or administer a lawful State up to the standard required by human civil claims. Accordingly, they have no proper laws nor magistrates, and are not even capable of controlling their family affairs.

Chandler (2007: 71) allocates the use of the term governance and not government to post-conflict reconstruction projects. For Chandler good governance rejects locally derived political solutions and views them as problematic, meaning that the political process is a product of state policies rather than constitutive of them. In this sense, democracy and political autonomy are deemed to be the end goals of the process, rather than crucial aspects of the process itself⁶⁰, a goal that for Chandler (2007) signifies ‘peace without politics’. Chandler (2007: 76) criticizes current state-building measures for having reversed the traditional (liberal democratic) understanding of rule of law as one deriving from popular consent. By establishing laws that precede elections and liberalization, good governance leaves in end effect little space for state institutions to develop links with societal forces, a process dubbed by Chandler (2007: 76) as ‘external regulation and international control’ rather than ‘capacity building’.

Chandler’s observations seem to resonate with Huntington’s (1968: 1) ideas in the height of decolonization, namely that the most important political distinction among countries concerns not their form of government but their degree of government. For Huntington (1968: 7) the main challenge is to create a legitimate public order for ‘authority has to exist before it can be limited’. Although good governance refers to a standard of civilization, Chandler and Huntington have pointed out that in essence the external promotion of good governance undermines its liberal and democratic concept entailing popular sovereignty and self-determination.

2.6 On self-determination, democracy and liberalism

Up till now the study has exposed views as to what constitutes a state, what are the different types of state failure and correspondingly what is the role of sovereignty that individual states and the international community may exercise in individual states. However, a very important question to address is what type of state needs to be created

⁶⁰ The assumption is that democracy is good for the Western powers but tutelage is better for states judged to be under stress, at risk of failure or in post-conflict recovery. This assumption espouses the view that the problems of politics can be resolved outside the realm of the political, that they can be socially engineered in the realms of law, social policy and administration; In the words of Alejandro Bendaña ‘good governance or state-building ... has deep ideological presumptions which purport to offer technical solutions to what in essence are political problems’ (quoted in Chandler 2007: 75).

after state failure or violent conflict – is it to be democratic, is it to be liberal – what do these concepts entail.

2.6.1 Self-determination

Juxtaposed to the previously discussed concept of good governance, whereby the ‘good’ is determined externally, this section draws on the origins of present-day states and sovereignty, namely on the principle of self-determination – the determination of ‘good’ governance from within. Self-determination is viewed as the underlying principle of both liberalism and democracy by combining the principles of freedom and equality in the exercise of self-rule.

The concept of self-determination is understood whenever a people freely determines its own political status. In Western Europe and the US the notion of self-determination drew on inspiration from the Enlightenment and popular sovereignty, whereas in Central and Eastern Europe, the notion of self-determination was based on the 19th century phenomenon of nationalism taking ethnic and cultural factors into account (Musgrave 1997: 2). In his work *Two Treatises of Government* (1690) John Locke maintains that political sovereignty ultimately rests with the nation, which is able to transfer it from one sovereign to another, yet Musgrave (1997: 3) notes that whereas in the Western parts of Europe the nation referred to the people as one unity irrespective of cultural and ethnic differences, in the Eastern and Central parts of Europe the ‘nation’ was understood predominantly in ethnic terms⁶¹.

The ‘Common Article 1’⁶² of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR) promulgates that:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The problem is that there is no internationally accepted definition of the term ‘people’, to whom self-determination can be ascribed according to the ‘Common Article 1’. Sir

⁶¹ Thus, the concept of self-determination in Central and Eastern Europe developed from the concept of nationalism and the group rather than the individual (Musgrave 1997: 6). In contrast, self-determination in Western Europe was defined in terms of popular sovereignty and representative government; the role of the state was to ensure liberty and well-being of all individuals, rather than the well-being of a particular nation (Musgrave 1997: 12).

⁶² According to Keal (2007: 292) the ‘Common Article 1’ refers to self-determination as including the right to secession and full independence.

Ivor Jennings remarked that the ‘people cannot decide until some one decides who are the people’ (Musgrave 1997: 148). Although Keal (2007: 292) prescribes self-determination as an abundant right to all peoples, in reality the applicability of this principle has been limited to internal (development) rather than external (independence) self-determination. Internal self-determination has, in turn, been made applicable mostly in the liberal and democratic dimensions.

The Helsinki Declaration refers to peoples as those populations inhabiting sovereign and independent states as demarcated by traditional borders. However, this definition does not take account of linguistic, cultural or religious factors that determine the formation of peoples protests Musgrave (1997: 152). Disputes between ethnic groups within a given territory cannot be resolved through an appeal to the will of the majority because it will simply reflect the will of the most numerous ethnic group on the territory⁶³, which might lead to secession. This is why the question of Kosovo has led to controversial debates surrounding its possible resolution.

In an attempt to reconcile the tension between ‘people’ and self-determination, Jeong (2000: 227) has drawn attention to the internal and external dimensions of self-determination: the internal one is between the people in a territory and their government – popular sovereignty, whereas the external one is the relationship between a self-defined territory and the external world. Thus, internal self-determination has often been prescribed as a remedy to those ‘peoples’ who do not fit into the Helsinki Declaration definition of ‘people’, often referring to the problems of ethnic, religious or linguistic minorities.

2.6.2 On democracy

Following on the discussion about self-determination it is clear that although self-determination is an expression of the democratic right to govern oneself, self-government does not always imply democracy as an end result. According to Chris Brown (2002) there is no guarantee that when people are given the right to govern themselves they would choose a democratic type of government, indeed, they could also vote for a corrupt regime or a monarchy in absolutist terms and that would still imply self-determination. In other words, the dilemma of self-determination and self-

⁶³ As Schoch (2007: 60) notes there is a tension between *demos* and *ethnos* due to the applied UN decolonization formula of ‘*uti possidetis*’.

rule and the stemming from it concept of local ownership, refers on a normative plain of analysis to the communitarian-cosmopolitan debate, whereby a tension exists between the ‘ends of morally equal individuals’ and the ‘ends of morally equal communities’ (Cochran 1999: 8). This debate questions whether many good conceptions of societies or only one good conception of society can exist and in a strictly juridical sense it is unclear as to who is allowed to exercise self-rule and self-determination, who are the ‘people’, as already noted in the previous section. In essence, whether one likes it or not, the whole question about post-conflict reconstruction draws on the question of what type of state should be constructed and what type of world order is one striving towards – a communitarian one that values plurality and the self-determination of communities or a cosmopolitan one – which values the self-determination of the individual and defends solidarist conceptions of a world of humanity based on universal human rights.

Dingwerth (2004: 19) introduces also the concept of deliberative democracy, by claiming that in contrast to proponents of cosmopolitan and pluralist democracies that call for more or less government, proponents of deliberative democracy call rather for ‘more discourse’ or ‘more deliberation’. Thus, for deliberative democracy theorists, such as John Rawls and Jürgen Habermas, ‘the democratic procedure of collective will-formation is the only post-metaphysical source of legitimacy’⁶⁴ (Dingwerth 2004: 19). Thus, the legitimacy⁶⁵ of collective decision-making is derived not from the empirical form of the laws, neither from the moral content attached to them, but rather from the procedures of decision-making themselves (Dingwerth 2004: 19). Dingwerth (2004: 22) concludes that solidarist approaches focus on self-determination and inclusiveness, whereas pluralist approaches emphasize the role of checks and balances and deliberative approaches stress the discursive character of will-formation and

⁶⁴ With regard to democracy and legitimacy Dingwerth (2004: 10) refers to two distinctions of legitimacy – the first one is between an empirical conception, which refers to ‘the social acceptance of a political order as rightful’ and a normative conception of legitimacy which refers to the ‘moral or ethical reasons that support such an acceptance’, and the second distinction refers to input and output legitimacy, the former describing the input dimension of political processes – whether those affected by a decision have a say in the decision-making process and whether the decision-making procedure is fair, and the latter referring to the substantive quality of the results of decision-making; both these connotations are based on Scharpf (1999).

⁶⁵ According to Dingwerth (2004: 23-28) there are three dimensions of democratic legitimacy that are present in all democratic models: legitimacy through participation (whereby here it is important to identify the scope and quality of participation, in other words who participates and how do they participate – passively or actively, is representation also participation?), legitimacy through control (the choices of governors should be subject to the control of the governed, which relates to accountability and transparency) and legitimacy through discursive practice (universality, rationality and reciprocity).

demand mutual reason-giving. Thus, it is obvious that irrespective of whether one refers to solidarist, pluralist or deliberative democracy approaches, legitimacy and local participation can be strengthened in each case, as Dingwerth has pointed out.

Ottaway (1995: 235) argues that by definition democracy cannot be imposed by force; rather 'it is based on a largely voluntary compliance with a set of rules of the political game'. However, Ottaway (1995: 235) distinguishes between democracy and democratization (the transition from authoritarianism to a stable democracy), whereby if the former is an end/ desired state, the latter represents a highly disruptive process, when existing conflicts in collapsed states manifest themselves freely without the restraints that regulate conflict in a well-established democracy⁶⁶, a point well taken by the advocates of apolitical peacebuilding such as Paris (2004) and Chesterman (2007).

Rich & Newman (2004: 5) state that democracy promotion on behalf of the UN is controversial, for the Charter itself does not embrace the idea that members states need to be democratic:

The word 'democracy' does not appear in the UN Charter. It is not one of the stated purposes of the United Nations to foster democracy, to initiate the process of democratization, or to legitimate other actors' efforts in this field.

In contrast to Rich & Newman, Tomuschat (2002: 327) stipulates that the right to democracy has been proclaimed as a human right (UN Commission on Human Rights, S/RES/57, 27 April 1999). Thus, for Tomuschat (2002: 327) both the human right to democracy and the right to self-determination prohibit the imposition of governance upon people from above, which does not stem from their own free will. Despite this traditional understanding of democracy as stemming from the free will of the people, the incentive to promote democracy in another country has been the theory of democratic peace.

2.6.2.1 Democratic and liberal peace

The argument behind the democratic peace theory, which builds on Kant's *Perpetual Peace*, is that democracies are less likely to go to war against each other and are also less likely to experience internal violence than non-democracies, for social conflicts

⁶⁶ For Ottaway (2007: 366) democratization consists of three processes: liberalization, elections and consolidation. Today there is consensus amongst authors that elections alone do not have a positive effect on democracy.

that might become violent are settled through voting, negotiation, compromise and mediation (Paris 1997: 60).

Lipson (2003) defends the democratic peace theory⁶⁷ by suggesting that constitutional democracies seldom fight each other because they possess good communication and information channels that prevent the outbreak of violence. Democratic peace signifies for Lipson what has been named by other authors, such as Bellamy et al., liberal peace.

Bellamy et al. (2004: 30) point to the following problems of the liberal peace⁶⁸ theory: firstly, there is no evidence that liberal peace exists and democracies do not fight each other (e.g. Spanish-American War in 1898), secondly, the concept of liberal peace is statist and does not account for a variety of other actors, thirdly, democracy has been linked to the imperial project of colonization and thus to negative connotations, fourthly, democracy cannot be imposed, and finally, in some countries the promotion of democracy has unleashed previous patrimonial ties within society and has led to violence (Sub-Saharan Africa). The tension between liberalism and self-determination is further elaborated on in the following section.

2.6.3 On Liberalism

The contradictions of liberal theory when it comes to self-determination are described as the ‘tension between the ideal claim that all people can govern themselves and the assumption based on the liberal philosophy of history that, in reality, only those who endorse the market democracy model demonstrate sufficiently mature reason to be endowed with the right to self-determination’ (Jahn quoted in Tansey 2008: 88).

If Ottaway claimed that to impose democracy by force is undemocratic, Bukovansky (2007: 176) argues that ‘to impose liberal democracy by force is illiberal

⁶⁷ According to the democratic peace theory (Doyle 1983, Levy 1988 quoted in Bellamy et al. 2004: 26) democracies tend not to fight each other; the institutional explanation of democratic peace states that in democracies institutions place constraints on decision-makers and they cannot just go to war, a utilitarian explanation of this theory is based on the idea that democracies do not wage war against one other for it is costly and irrational and the normative explanation as to why democracies do not fight against each other has much to do with the idea of legitimacy, which makes it unjust to wage war against other democracies.

⁶⁸ Bellamy et al. (2004: 27-29) argue that the Westphalian conception of liberal peace views peace between states as vital and constructs institutions to resolve differences between states, whereas the post-Westphalian conception describes liberal democratic peace within states as desirable and the institutionalization thereof in conflict-driven societies, i.e. Bosnia, Kosovo, East Timor.

because it does not respect the liberties of those upon whom the model is being imposed'⁶⁹.

Some authors have tried to avoid the entire problematique of self-determination and the stemming from it concept of local ownership (Paris, Chesterman) by suggesting that one should have a liberal and democratic state as an end goal and not as a means to an end. Paris (1997: 57) illustrates that democracy and capitalism encourage societal competition and war-shattered states are 'ill equipped to manage societal competition induced by political and economic liberalization' due to the recent history of violence and the lack of institutional structures that can peacefully resolve disputes, and in such societies democracy and capitalism can rather exacerbate violence. Instead, Paris (2004: 7) proposes a peacebuilding strategy called '*Institutionalization before Liberalization*' (IBL) according to which peacebuilders should delay the introduction of democratic and market-oriented reforms until 'a rudimentary network of domestic institutions, capable of managing the strains of liberalization, have been established' and once the institutions are in place, peacebuilders should manage the democratization and marketization process as a 'series of incremental and deliberate steps, rather than immediately unleashing political and economic competition'. Paris (2004: 47-51) advocates a return to the classical writings on liberal peace during the Enlightenment⁷⁰, which dwelled upon how to construct a stable and functioning government in conditions of anarchy (state of nature).

Yet, even though Paris makes a compelling argument against liberalization and marketization, in end effect he espouses the very concepts he seeks to reject, in other words, he still discusses a liberal and democratic state. However, what this study is questioning is whether one can graft a liberal and democratic state without

⁶⁹ Bukovansky (2007: 180) views liberalism as a desire for self-government, self-determination and above all being free of domination (a definition borrowed from Petit).

⁷⁰ These writings started off with a state of nature in which government did not exist and tried to describe the circumstances in which a society characterized by justice, peace, and prosperity might emerge: Locke argued for the establishment of a law-based regime following the rule of law and founded on popular consent, Hobbes pioneered the idea of transferring sovereign authority upon one individual or group of individuals – the Leviathan – thus transforming the state of nature into a more stable and peaceful society; both Locke and Hobbes presupposed that domestic peace referred to governmental institutions capable of defending society against internal and external threats; Locke and Smith argued for a constitutionally restrained government; Kant also warned of the dangers of 'wild freedom'; James Mill and Montesquieu advocated a balance between the preservation of individual liberty and the endowment of government with sufficient means so as to uphold the constitutional order and protect against foreign and domestic threats (In Paris 2004: 47-51).

liberalization and marketization. As a challenge to peacebuilding are seen not the competing societal forces, which Paris fears, but rather the idea that *IBL* strategies that do not liberalize a society do not stand a chance to transform these competing forces into more cooperative ones. What this study is arguing is not that peacebuilding via TAs in Kosovo has not been so successful due to the presence of conflicting ethnic interests in the province (societal competition in Paris' words), but rather due to the inability of the TA to transform these conflicting interests into more cooperative ones. This inability to transform societal competition stems, according to this study, from *IBL* strategies of mechanically engineered societies that bypass the will and the tensions within society *per se*. Paris' account is deficient in delineating why *IBL* strategies would work, for in contrast to Paris' theory the classical writings on liberal peace during the Enlightenment were concerned with the idea of consent and sovereignty, indicating that sovereignty stems from the people and can be transferred to the government in order to escape the dangers of 'wild freedom' (in Kant's words), whereas Paris' argument seems to bypass the whole notion of popular sovereignty omnipresent in the classical writings. Thus, *IBL* is a sound argument in favour of depicting the dangers of anarchy, however it fails to delineate how socially engineered institutions that are not liberalized and democratized will lead to a liberal and democratic state and can be transposed effectively to such a state in a sustainable manner.

2.7 Conclusion

Chapter two has delineated the inherent tensions and debates present in conceptualizing what constitutes a state, a failed state, sovereignty and good governance. This chapter has, set the background to peacebuilding via TAs and state creation.

In contrast to Paris (1997, 2004) and Cunliffe (2007) who seem to be at two extremes, debating as to whether institutions and the rule of law or politics should come first in post-conflict societies, this study attempts to escape the question what should come first, rather it advocates for an 'institutionalization with liberalization' strategy. This study claims that the international community would not have got involved in the post-conflict society if there were no serious problems within it, and

argues that to make the people sovereign right from the start is dangerous, which sides more with Paris' argument. Despite their deep reasoning and arguments Cunliffe (2007) and Bickerton (2007) do not point out how the initial problem of the conflict will be solved if one is to endow the peacebuilding practice with politics or inclusion from the start.

This study disagrees with the overtly political position on peacebuilding that self-determination is important and should come first, irrespective of whether the regime thus constructed is liberal or authoritarian, meaning that the construction of the future state or society is somewhat left to pure luck, if the people desire a liberal state – so shall be it, and if they wish to have an authoritarian government, it is still preferable to a government imposed from outside. This Walzerian approach offers little insight into how the problems of the society in question that stimulated peacebuilding efforts via TAs will be solved. On the other hand, Paris' argument isolates the political process from peacebuilding exercises, warning against the dangers of anarchy and is too concerned with the construction of stable institutions. Yet, to have stable institutions does not equal having stable democratic institutions and it remains a puzzle as to why the institutions thus constructed will, indeed, be democratic and function democratically. There is no attention paid to the local problems of society and their transformation. Paris acknowledges that there is societal competition within post-conflict societies but all he seems to be advocating is a quick exit strategy for the international peacebuilders and, in end effect, there is no guarantee that an institutionalized society will be stable, or democratic, or liberal. The societal competition could well persist beyond the scope, or outreach, of the institutions created and since these institutions have been constructed in an apolitical manner, it might well be that they are ill-equipped to manage societal competition in an illiberal state. The fact that liberal institutions have been created does not signify that a liberal society is in place as well, and as such it might be that the problems, for which the liberal institutions are created, do not match the problems of the illiberal society and thus, there is little contribution to solving the problems of society *per se*. As Fukuyama (2004a: 4) argues, until now 'no one has solved the more serious problem of how to implement ... the transition to self-sustaining indigenous institutions'.

In trying to find a solution to the problem of institutional transfer identified by Fukuyama, this study proposes an approach that attempts to bridge the apolitical and

political debates outlined above. By introducing the concept of local ownership in peacebuilding activities this study hopes to bridge the incompatibility of *IBL* with the demands of popular sovereignty and self-determination. This study suggests that a successful peacebuilding exercise is deemed as one being able to transfer power to the local population, i.e. achieve local ownership. However, local ownership is deemed as capable of achieving long-lasting and stable peace only if it consists of a democratic and a liberal component. The democratic component is responsible for the local participation of the population, thus ensuring that self-determination does take place and the liberal component of local ownership is there to make sure that illiberal elements, such as spoilers, do not infiltrate the peacebuilding process. The liberal component of local ownership deems it necessary to achieve the internationally stipulated benchmarks for the local population. Thus, a successful endeavour of peacebuilding via TAs would involve both liberal and democratic local ownership, accompanied by a reconstruction of conflicting interests. In the following chapters more light is shed on how the proposed theoretical middle ground is to be achieved.

3. PEACEBUILDING VIA TRANSITIONAL ADMINISTRATIONS

3.1 Introduction

Whereas the previous chapter was concerned with the outline of what constitutes a state, state failure and sovereignty and what types of states need to be constructed in post-conflict societies, the present chapter attempts to analyse what are the historical and conceptual foundations of contemporary peacebuilding via TAs, what are the historical predecessors of such activities and what tasks need and can be assigned to such endeavours. Therefore, the following sections illustrate the conceptual definitions of the activities of TAs and the historical development of similar undertakings in the past.

3.2 Nation-building, statebuilding and peacebuilding

Since most authors have been congruent on the fact that state failure entails primarily a failure of state institutions and capacity, it is rational to presuppose that peacebuilding, in other words, dealing with state failure in post-conflict societies, will include reconstruction of those institutions and state capacities that have previously failed⁷¹. With regard to the restoration of failed states three concepts have been used interchangeably by scholars – statebuilding, nation-building and peacebuilding. As the concepts themselves suggest, there are minor differences in meaning.

⁷¹ According to Forman (2006: 199) in all post-conflict reconstruction the ultimate goal is to create a minimally capable state in four key areas: 1) security, 2) governance and participation, 3) social and economic well-being, 4) justice and reconciliation.

3.2.1 Nation-building

A clear distinction has been made between nation-building⁷² and statebuilding, whereby the former concept has been depicted as the creation or repairing of cultural, social and historical ties, binding people together in a nation⁷³ and the latter concept of statebuilding⁷⁴ has been linked to the creation and strengthening of government institutions such as armies, police forces, judiciaries, banks, health and education systems (Fukuyama 2004a: 1). Fukuyama (2006: 3) claims that nations (communities of shared values, traditions and historical memory) can never be built by outsiders, they evolve in an ‘unplanned historical-evolutionary process’, whereas statebuilding refers to ‘constructing political institutions or... promoting economic development’. Thus, Fukuyama is sceptical toward the ability of the international community to practice nation-building.

3.2.2 Statebuilding

Fukuyama (2004a: 2) views statebuilding as consisting of two separate phases, both critical to the endeavour. The first phase ‘involves stabilizing the country’ in terms of humanitarian assistance, infrastructure and economy, the second phase begins after stability has been achieved and consists of creating ‘self-sustaining political and economic institutions that will ultimately permit competent democratic governance and economic growth’. In contrast to statebuilding, Fukuyama (2004a: 5) delineates nation-building as a ‘difficult, long-term enterprise’ and in those places where it has been most successful – Germany and Japan, it was connected with presence of the US for generations.

⁷² Pei et al. (2006: 64, 82), argue that the goal of American nation-building has been regime change or survivability and therefore, the process of nation-building is necessarily political and not merely a technical endeavour. Jenkins & Plowden (2006: 1) use the term nation-building to refer to an intervention by an outside power in the internal workings of a state and claim that there is little doubt that the nation being constructed must be a democratic nation. Thus, authors have understood under nation-building what Fukuyama has understood as statebuilding and others have depicted as peacebuilding.

⁷³ Hamre and Sullivan (2002: 6) have been sceptical as to what nation-building can achieve:

The goal, during the short-to-medium run, is to create a minimally capable state, not to build a nation or address all the root causes that imperil peace. Those goals involve a longer term process that is beyond the scope of what external actors can achieve or lead; actors within the country itself must do so.

⁷⁴ Fukuyama (2004b: 99) claims that only states can be deliberately constructed and when nations arise out of this process, it is a matter of ‘pure luck’.

3.2.3 Peacebuilding

The concept of peacebuilding, on the other hand, has long been associated with the institutionalization of peace (Chesterman 2001b: 3). Doyle (1998: 3) defines post-conflict peacebuilding as ‘measures organized to foster economic and social cooperation to build confidence among previously warring parties; develop the social, political and economic infrastructure to prevent future violence; and lay the foundations for a durable peace’.

Within the UN, preference has been given to the term (post-conflict) ‘peacebuilding’⁷⁵, stemming from UN Secretary-General Boutros Boutros-Ghali’s *An Agenda for Peace* (1992) and which has been defined as ‘action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict’⁷⁶. Peacebuilding has, thus, been contrasted to traditional peacekeeping which refers to the deployment of a UN presence with the consent of all parties concerned⁷⁷.

The *Supplement to An Agenda for Peace* (1995) defines the necessity for post-conflict peacebuilding in the sense of conflict management due to the fact that contemporary conflicts are predominantly within states rather than between them and these new types of conflicts present the UN with challenges, such as collapse of state institutions (referring to a ‘paralysis of governance, a breakdown of law and order, and general banditry and chaos’), civilian targets of violence and an enormous amount of refugees⁷⁸, which has called for more complex tasks demanding time and sensitivity. The Report refers to ‘multidimensional peacekeeping operations’⁷⁹. *An Agenda for Development* (1994) has stated that development is the most secure basis for peace and a fundamental human right⁸⁰. Thus, *An Agenda for Development* has addressed the ‘deeper foundations of global peace and security in the economic, social and environmental spheres’⁸¹ by linking peace and development.

However, by analysing separately the distinctions between nation-, state- and peacebuilding, it has become obvious that most authors refer to the same process and

⁷⁵ Barnett et al. (2007: 49) identify three dimensions of post-conflict peacebuilding: stability creation, restoration of state institutions and address of the socioeconomic dimensions of the conflict.

⁷⁶ A/47/27-S/24111, Para. 21.

⁷⁷ Ibid, Para. 20.

⁷⁸ A/50/60 – S/1995/1, Paras. 10, 12, 14 and 15.

⁷⁹ Ibid, Para. 22.

⁸⁰ A/48/935, Para. 3.

⁸¹ A/48/689, Para. 26.

imply very much the same process of ‘post-conflict peacebuilding’ that Boutros-Ghali introduced in *An Agenda for Peace*. Post-conflict peacebuilding is also practiced by TAs.

3.2.3.1 Transitional administrations practice peacebuilding

This study treats the exercises of UN TAs as peacebuilding (due to the fact that TAs represent the latest form of peacekeeping). Peacebuilding is viewed as an overarching concept, for this study argues that contemporary peacebuilding involves all three concepts: statebuilding, peacebuilding and nation-building (institutions need to be rebuilt, peace needs to be institutionalized and ethnic reconciliation needs to take place).

Authors have also concurred that UN TAs represent the latest development of UN peacekeeping missions (Rossbacher 2004: 31; Rittberger & Zangl 2003: 205). On a similar note Chesterman (2001b: 3) defines UN TAs as follows:

...extended international involvement (primarily, though not exclusively, through the United Nations) that goes beyond the traditional peace-keeping and peace-building mandates, and is directed at developing the institutions of government by assuming some or all of those sovereign powers on a temporary basis.

The creation of structures for the institutionalization of peace is an important exercise, also ascribed to the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET). Whilst the two terms of state- and nation-building signify ambitious projects, peacebuilding⁸² is the concept that most closely corresponds to the goals of a TA. TAs are *ad hoc* missions that cannot be charged with the task of nation-building, which would require long-term presence in a post-conflict society. Scholars such as Anthony Smith (1986) have argued that the moulding of nations can take place over centuries.

⁸² David (2002: 21) identifies the dilemmas of peacebuilding as referring to whether such strategies should foster development (the exclusivists argue ‘no’ and the inclusivists are for the promotion of development), however most peacebuilding strategists are in favour of an exclusivist approach, and the other ambiguity surrounds the question of when should peacebuilding take place (the gradualists are in favour of peacebuilding as a last step after peacemaking, peacekeeping, and peace-enforcement, whereas the synergists consider that peacebuilding should be complementary and supportive of other approaches such as preventive diplomacy). For David most observers believe that peacebuilding is applicable after civil war or conflict.

Thus, preference is given by the current study to the concept of peacebuilding. Peacebuilding is viewed as an all-encompassing term, including elements of state- and nation-building. This study treats UN TAs and peacebuilding as the latest development of peacekeeping operations.

3.2.3.2 Conceptual developments of peacebuilding

The birth of the term peacebuilding is linked to the 1992 *An Agenda for Peace*. Tschirgi (2004: 2) argues that it was then that the term ‘peacebuilding’ officially entered the international lexicon. However, Tschirgi (2004: 2) also points out that while the term ‘peacebuilding’ is relatively new, external assistance for post-war rebuilding goes back to post-World War II Europe and Japan. Thus, the substance of peacebuilding is nothing new. Ratner (1995: 52) has argued that there is a ‘new’ and ‘old’ peacekeeping, whereby the new UN peacekeeping is intrusive (the UN performs the role of guarantor, administrator and mediator) and as such it has prevented the UN from acting as a neutral player as was the case in ‘old’ peacekeeping. Thus, for Ratner the ‘new’ UN peacekeeping signifies the expansion of goals. However, Ratner (1995: 91) also acknowledges that early efforts at ‘new’ UN peacekeeping already took place during the League of Nations and the administration of the Saar Basin (1922-1935) with the aim of determining the future of the region by conducting a plebiscite. Ratner concludes that it is not clear to what extent ‘old’ and ‘new’ peacekeeping missions refer strictly to old and new developments within peacekeeping.

Similar to Ratner’s ‘old’ and ‘new’ conceptions of peacebuilding, authors have been debating on whether functions of UN TAs are ‘old’ or ‘new’. Caplan (2002: 9) comments on the ‘unique’ ‘responsibilities’⁸³ of UN TAs and recapitulates that ‘no international field operation has been vested with as much executive, legislative and judicial authority as some of the international administrations that have been established in the past six years’. Wilde (2008: 274), on other hand, states that complex peace operations are nothing new, statebuilding is not a post-1998 phenomenon (ONUC already practiced statebuilding in the 1960s), what has been new

⁸³ Caplan (2002: 9) underlines:

Never before has a mission had to make and enforce laws, exercise total fiscal management of a territory, appoint and remove public officials, create a central bank, establish and maintain customs services, regulate the local media, adjudicate rival property claims, run schools, regulate local business and reconstruct and operate all public utilities, among numerous other functions.

in UNTAET and UNMIK is the degree to which these two projects have engaged in the reconstruction of infrastructure and governmental institutions and this degree has been unprecedented.

According to Tschirgi (2004: 3) and David (2002: 20) *An Agenda for Peace, Supplement to An Agenda for Peace* and *An Agenda for Development* established the UN's theoretical approach to peacebuilding throughout the 1990s. However in practice the distinction between peacekeeping and peacebuilding became more blurred and by publishing the *Report of the Panel on United Nations Peace Operations (Brahimi Report)* in 2000 the UN acknowledged the links between peacekeeping and peacebuilding and referred to their *ad hoc* nature (quick impact projects - QIPs) and the need for disarmament, demobilization and reintegration (Tschirgi 2004: 3). Tschirgi (2004: 3-4) claims that between 1992-2001 the UN moved away from a 'linear view of the transition from war to peace ... to an integrated approach to conflict prevention, conflict management, and peacebuilding', thus capturing 'the complexity and multi-dimensional nature of the challenges facing the United Nations'.

3.2.3.3 Normative background to peacebuilding

The concept of 'liberal peace'⁸⁴ which views political and economic liberalization as effective antidotes to violent conflicts⁸⁵ (Tschirgi 2004: 5) is seen as the normative background underlying international peacebuilding. Ponzio (2007: 256-7) makes the argument for democratic peacebuilding for it is only so that the 'conditions necessary to mediate competing domestic interests and to address the root causes of a conflict peacefully' shall be created, democratic peacebuilding can also overcome and integrate the divergent conceptions between the internationals and locals with regard to authority and sources of legitimacy.

For Dombroski (2007: 10) peacekeeping theory is usually associated with the liberal institutionalist school of thought of International Relations as a variant of collective security theory. Collective security theory postulates that states must

⁸⁴ David (2002: 25) views peacebuilding efforts as based on the export of liberal approaches to security and democracy; as doctrine liberalism claims that the state exists to guarantee individual liberties and is there to democratically serve rather than dominate the collective will, economic interdependence is also a reason to extend peace. Richmond (2005: 59, 83) sees democracy and self-determination as principles of liberal peace, a peace that for the author is based on rewards and costs (conditionality), entailing negotiation.

⁸⁵ This means that human rights promotion, democracy, elections, constitutionalism, rule of law, property rights, good governance and neo-liberal economics have all become part of peacebuilding (Tschirgi 2004: 5).

renounce the use of military force as a means of settling disputes, must act in the interests of the greater community instead of pursuing egoistic self-interests, and must trust each other (Dombroski 2007: 10). Liberal institutionalists reject the realist notion that international stability is based on the balance of power of great powers, they believe that international organizations can and do have an independent effect on state behaviour and that they can prevent war and cause peace (Dombroski 2007: 10).

3.2.3.4 Measuring peacebuilding

Due to its complex nature peacebuilding has proven to be difficult to measure. Tschirgi (2004: 10-11) points out that precisely because of its complex nature, peacebuilding does not easily succumb to causal analysis and measurement of its effectiveness, some analysts prefer a minimalist approach to it (absence of conflict), others a maximalist (structural transformation of the economic, social and political factors that led to violence in the first place) and others prefer an instrumentalist approach by identifying promising short-term changes underpinning the peace, however in general peacebuilding evaluations remain an 'underdeveloped field'.

3.2.3.5 Positive and negative peace

Whereas traditional peacekeeping was most often charged with the promotion of negative peace, current peacebuilding operations are charged with positive peacebuilding tasks⁸⁶. The positive and negative distinction of peace was made by Galtung (1975: 29) who identifies 'two concepts of peace ... negative peace defined as the absence of organized violence between such major human groups as nations, but also between racial and ethnic groups because of the magnitude that can be reached by internal wars; and positive peace defined as a pattern of cooperation and integration between major human groups'. The absence of personal violence is negative peace since it does not lead to a positively defined condition; the absence of structural violence (for Galtung the capitalist structure) is positive peace, also referred to as social justice (Galtung 1975: 130). Galtung refers to the absence of organized violence between racial and ethnic groups as negative peace and on this basis one can argue that the ongoing latent conflict between Kosovo Serbs and Albanians represents a

⁸⁶ Isturiz (2005: 75) quotes Para. 13. of the Report of the Panel on UN Peace Operations (the Brahimi Report) by claiming that peacebuilding has the task to 'reassemble the foundations of peace and provide tools for building on those foundations something that is more than just the absence of war'.

challenge not only to the UN TA and the positive peace that the TA is trying to establish, but that this conflict potentially undermines the negative peace that has been established between the conflicting parties.

Following Galtung's tradition, Schirch (2006: 64) links peacebuilding to just peace by claiming that peacebuilding not only helps people to recover from violence in all forms, but it serves also to empower people to create structural justice. For Schirch, (2006: 65) just peace implies the existence of a set of sustainable processes which enable people to meet their basic human needs and protects their human rights in the absence of direct or structural violence.

Thus, positive peace is also the type of peace clearly envisaged by R2P, since the principle acknowledges the responsibility to rebuild, in other words, the responsibility to further structural changes that will not only ensure the absence of violence, but will also prevent its recurrence and will set the state in question on a path to progress and development. Due to the fact that Galtung's notion of negative peace can coexist with structural or cultural violence and under specific conditions these types of violence could lead to further violence, it is inadequate, on the other hand positive peace involves 'equitable and participatory stable political institutions, as well as economic, social and cultural conditions that guarantee diversity and minimal standards of well-being and protection for the vulnerable' and is desirable (Said & Lerche 2006: 134).

According to Said & Lerche (2006: 140-1) the UNDP list of characteristics of 'good governance' is a fairly comprehensive list of positive peace, these characteristics include participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency and accountability.

For Jeong (2000: 23) positive peace is understood as the prevention of loss of life and a guarantee for positive human conditions – the change of human conditions has become a goal of peace, whereas negative peace by contrast, focuses on the absence of direct violence. For Jeong (2000: 28) building positive peace can and has to be complementary to practicing negative peace. This study also stresses the intertwined nature of promoting positive peace and negative peace.

The distinction between positive and negative peace leads to a distinction within the UN peacekeeping missions. In the early years after UN establishment, peacekeeping missions focused primarily on negative peace promotion between

countries and in the 1990s their roles increasingly incorporated the promotion of positive peace within states. The changing roles of peacekeeping missions have been linked to the altered nature of conflicts and the move from interstate to intrastate warfare⁸⁷.

3.2.3.6 Generations of peacekeeping

Most authors distinguish between several generations of peacekeeping that refer to the changed tasks of UN peace operations. It is important to stress that the changed tasks of peacekeeping are not necessarily chronological. Thus, the United Nations Mission in the Congo (ONUC 1960-4) has been depicted as a peacekeeping mission (a type of TA) with positive peace functions⁸⁸, atypical for the 1960s. Bellamy et al. (2004: 6) argue that there is ‘no neat chronological division that accurately reflects the practical reality and history of peacekeeping operations’, and moreover, a single peacekeeping operation can move back and forth between these categories.

However, most authors distinguish between traditional and complex, multidimensional peacekeeping. Chesterman (2005: 341) differentiates between traditional peacekeeping (based on consent and minimum use of force), and multidimensional peacekeeping to include post-Cold War operations such as in El Salvador, Cambodia, Mozambique and the Congo (1960-4). To these two categories Chesterman adds a third⁸⁹ generation of peacekeeping, also known as ‘peace enforcement’ authorized by a Chapter VII mandate of the Security Council (Somalia).

Bellamy et al. (2004: 5-6) depict five types of peacekeeping operations based on the desired ends they wish to achieve: traditional peacekeeping (aiming to build confidence between the belligerent parties and to promote liberal peace between states, as in Egypt, Cyprus and the Middle East), operations to manage transition (concerned with the implementation of a particular settlement agreed upon by the belligerent parties, based on consent of the parties involved), wider peacekeeping (an *ad hoc* response to the breakdown of ceasefires, e.g. Bosnia, Rwanda, Sierra Leone), peace enforcement (impose the will of the Security Council upon parties to a conflict) and finally, peace-support operations (to establish liberal-democratic peace within states).

⁸⁷ An observation made by *An Agenda for Peace* (1992).

⁸⁸ See Wilde (2008), Chesterman (2004).

⁸⁹ For Woodhouse & Ramsbotham (2005: 150) third generation peacekeeping can be understood as ‘a stepping stone towards a possible cosmopolitan future ... centred on the collective idea of human security’.

Moreover, Bellamy et al. (2004: 1-2) identify a struggle between those who deem peacekeeping's role in global politics in Westphalian terms and those that see it in post-Westphalian terms, although both approaches support the liberal peace thesis, the former see the role of peacekeeping in settling disputes between states; whereas the latter approach views violent conflict and illiberal governance within states as a threat to international peace and security. Bellamy et al. (2004: 3) argue that this tension of peacekeeping is ongoing and inherent to the UN Charter, being partly responsible for the theoretical and practical difficulties that peacekeepers experience today.

Doyle & Sambanis (2006: 11) observe that in contrast to the first generation of peacekeeping that called onto interstate parties to observe a truce, the second-generation of peacekeeping relied on the consent of the parties concerned, and the third generation of peacekeeping (called under Chapter VII and not Chapter VI and a half) establishes a mission without the prior acquiescence of the parties concerned, usually intrastate⁹⁰.

The Report of the High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (2004, Para. 211-2), states that traditionally peacekeeping missions were known as 'Chapter VI' missions, whereas peace enforcement missions were known as 'Chapter VII' missions. However, this characterization is sometimes misleading. According to Dag Hammarsköld (quoted in Kondocho 2005: 22-3) peacekeeping generations are known as 'Chapter VI and a half' operations, combining the pacific settlement of disputes within states with the provision of international peace and security and when necessary intervention within states.

Kondocho (2005: 22-3) depicts the following generations of peacekeeping: First-generation or traditional UN peacekeeping operations (acted as a buffer between the parties to the conflict and monitored the ceasefire, they were based on consent of the parties concerned and did not use force except for self-defence). Second-generation or

⁹⁰ Doyle & Sambanis (2006: 10) classify the generations of UN peace operations in the following manner:

- 1) Preventive diplomacy: prevent disputes from arising between parties, prevent the escalation of disputes and prevent the spread of disputes;
- 2) Peace enforcement: ensure compliance with a ceasefire agreement;
- 3) Peacemaking: aiming to bring the hostile parties to an agreement;
- 4) Peacekeeping: established to deploy a peacekeeping mission in the field with the consent of all the parties concerned;
- 5) Post-conflict reconstruction: designed to develop a political, economic and social infrastructure to lay the foundations for a durable peace.

multidimensional peacekeeping with various purposes: election monitoring, demobilization and reintegration of former combatants, human rights monitoring, partial civil administration, mine clearance and civilian police: UNTAG (Namibia, 1989-90), UNTAC (Cambodia, 1992-3), ONUSAL (El Salvador, 1991-5) and third-generation peacekeeping operations that combine military and humanitarian components and are no longer based on the consent of the parties, taken under Chapter VII of the UN: UNOSOM II (Somalia, 1992-4), UNPROFOR (Yugoslavia, 1992-5).

Thakur & Schnabel (2001: 9-14) refer to six generations of peacekeeping: 1) traditional peacekeeping (pending peace), 2) second generation: non-UN peacekeeping (outside the UN system), 3) third generation – expanded peacekeeping (Namibia, Cambodia), 4) fourth generation – peace enforcement (Somalia, Bosnia and Rwanda), 5) fifth generation – peace restoration by partnership (Haiti, Georgia, Rwanda), 6) sixth generation – multinational peace restoration, UN state creation (East Timor).

Wilde (2008: 277) favours the substitution of the old vs. new dichotomy of peacekeeping with a division that is not linear in terms of historical evolution, but rather a ‘basic’ vs. ‘complex’ or ‘multifunctional’ distinction of peacekeeping operations.

In essence, all classifications of peacekeeping operations have moved from traditional peacekeeping (responsible for truces between states and established with the prior consent of the parties concerned) to complex or multidimensional peacekeeping operations (that are usually known as Chapter VII missions, established within states and without the prior consent of the parties involved). In this classification scheme of peacekeeping missions, TAs represent the apogee of peacekeeping development and have been classified by all authors as the latest form of peacebuilding/ peacekeeping exercises.

3.3 Transitional administrations

Until now the current chapter has devoted attention to the activities of TAs, namely peacebuilding, and has stressed that the goal of current complex peacebuilding missions (a case to which also TAs belong) has been the promotion of positive peace and, subsequently, the treatment of structural and root causes of conflict. Thus, TAs

have been charged with the task of creating effective states, as opposed to failed states, states that are both peaceful and well-functioning.

Having sketched the background to the activities performed by TAs, namely peacebuilding, it is now time to examine TAs as an institution and analyse not only the inherent dilemmas and pitfalls of this institution, but also take a historical approach toward this type of peacebuilding mission and uncover what were the roles and functions of the predecessors of TAs, charged with tasks of peacebuilding.

3.3.1 Conceptual definitions

In the literature congruence exists amongst authors as to what represents the object of analysis of the present study, namely what constitutes a transitional administration. In general, authors agree that transitional administrations are the latest form of development of UN peacekeeping missions that assume the governing power within a failed state/ territory for a temporary period of time. For example Thakur and Schnabel (2001: 13) define transitional administrations as the latest (sixth) generation of peace-keeping activities that entail ‘state creation ...from scratch with the restoration of law and order’. On a similar note Rossbacher (2004: 31) views transitional administrations as the latest development of peace-keeping missions promoting development, democracy and human rights⁹¹. Chesterman (2002c: 3) defines UN transitional administrations as ‘the most complex operations attempted by the United Nations’ and argues that even though Kosovo and East Timor are often treated as being ‘unique’ in the history of the UN, one might also consider them ‘as the latest in a series of operations that have involved the United Nations in statebuilding activities to develop the institutions of government through an assumption of sovereign powers on a temporary basis. Chesterman (2004: 257) stresses the importance of the limited mandate of TAs⁹² and argues that TAs will remain an ‘exceptional’ activity exercised on an *ad hoc* basis in the cases of institutional and political uncertainty.

⁹¹ Rossbacher (2004: 31) names the final stage of peace operations as UN TAs established through a UN SCR, such as UN SCR 1244 for Kosovo (UNMIK) and UN SCR 1272 for East Timor (UNTAET), whereby Boutros-Ghali’s post-conflict peacebuilding concept is emphasized, and as such no peace is envisioned without development, and no development is foreseen without the respect for human rights and democracy.

⁹² Chesterman (2004a: 57) subdivides TAs into five categories: 1) as a final act of decolonization, leading to independence (East Timor, Namibia), 2) temporary administration pending the transfer of control to an existing government (Western Irian, Western Sahara, Eastern Slavonia) 3) temporary administration pending the holding of elections (Cambodia), 4) interim administration as part of an ongoing peace process without an end state (Bosnia, Kosovo), 5) *de facto* administration or

Knudsen & Laustsen (2006: 6) also stress the ‘temporary assumption of government functions’ by the UN TA in cases where territories and peoples have been left in a ‘fatal political vacuum’, the authors observe that the international responsibility to administer war-torn territories has been depicted using a number of terms: international territorial administration (ITA), international trusteeship⁹³, transitional or interim administrations.

Shain and Linz (1995: 41) define UN TAs as interim authorities that are a caretaker of a given country until a democratically-elected government can take charge.

Although congruence amongst authors exists with regard to what constitutes a TA, various authors have pointed out to different deficiencies and pitfalls of TAs.

3.3.2 Dilemmas of transitional administrations

In the existing peacebuilding literature authors have pinpointed to the major deficiencies of the transitional administrations undertaken until now. As some of the major concerns have been noted the lack of clarity in the mandates, the inconsistency of means and ends applied, the overly ambitious projects without exit strategies (Chesterman 2003: 1), as well as the failure to consult with local authorities over the future of the institutions constructed (Chesterman 2002c: 1). A major pitfall of TAs has been the democratic deficit, identified by numerous authors, as well as the lack of accountability and legitimacy. As already mentioned in chapter two, Chesterman has criticized TAs for exercising benevolent autocracy in trying to instil democracy.

3.3.2.1 Lack of local ownership

UN TAs encapsulate liberal ideas such as universalism, protection of the individual and peace promotion, however, on the other hand, the critique has often been levelled at UN TAs that they are but a renewed form of international tutelage. The critique

responsibility for basic law and order in the absence of governing authority (Congo 1960-4, Somalia 1993-5, Sierra Leone 1999-).

⁹³ Zaum disagrees with the labelling of TAs as international trusteeship. For Zaum (2007: 51) there are three structural characteristics that make international administrations distinct from colonial protectorates and trusteeship mandates: 1) they are established and staffed not by a single country, but by an international organization (League of Nations, UN, OSCE, EU) 2) international administrations are involved in governance rather than monitoring and assistance; 3) the spatial identity of the organization is international, as opposed to the local one of the territory concerned.

reiterates that UN TAs often become deaf to local voices or are unclear as to when they should end⁹⁴.

In order to solve this deficiency, the International Commission on Intervention and State Sovereignty (ICISS) has suggested that reviving the functions of the Trusteeship Council and Chapter XII of the UN could provide useful guidelines for the administering of territories. In other words, it has been proposed to shift the responsibilities of TAs from an *ad hoc* basis to a more permanent institution with concrete and constant goals. However, the counterpoint has been that Article 78 of the UN Charter forbids the implementation of the Trusteeship System in current UN members' territories⁹⁵, which does of course, render the entire discussion obsolete since most of the states where TAs are applied today are UN members.

3.3.2.2 Clarity of mandate

The clarity of mandate has been identified as a plaguing problem by both policy-makers and scholars alike. Chesterman (2007) points out how in Kosovo a mandate with vague objectives can lead to contradictory results.

3.3.2.3 Ad hoc assignments

The fact that transitional administrations today occur on an ad hoc basis, lacking specific institutional criteria for their implementation is a problem that has also been encapsulated by the Brahimi Report on UN Peace Operations (Para. 78):

... if the Secretariat anticipates future transitional administrations as the rule rather than the exception, then a dedicated and distinct responsibility centre for those tasks must be created somewhere within the United Nations system. In the interim, DPKO [the Department of Peacekeeping Operations] has to continue to support this function.

3.3.2.4 Democratic deficit

Authors have criticized the merely external dimension of democracy promotion. Knoll (2007: 44) notes that the UN treats 'good governance' as a substitute for democratic

⁹⁴ Ahmed (2005: 2) views no chance of having a 'one size fits all' solution when it comes to reconstruction and the establishment of self-sustaining peace; instead he stresses the importance of the local cultural context for the success of a reconstruction process.

⁹⁵ According to Article 78 of the UN Charter (quoted in Crawford 2007: 601):

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on the principle of sovereign equality.

legitimization and states that such an endeavour can only be legitimate⁹⁶ if it is on behalf of and for the benefit of the people. According to Barnett & Finnemore (2004: 166) international organizations are legitimate when they possess procedural legitimacy (when their procedures are viewed as proper and correct) and when they possess substantive legitimacy (they pursue goals that are consistent with the values of the broader community). Legitimacy has been stressed not only as a method to overcome the democratic deficit of TAs, but also as a method to boost successful governance.

3.3.2.5 Legitimacy

The governing success of institutions has often been linked to the question of legitimacy. Clapham (2005: 185-6) states that for authority to be successful, it also needs to be legitimate:

Legitimacy can be defined as a particular status that an individual, a body, or a norm enjoys by virtue of its conformity to recognized principles or accepted standards and rules of behaviour that allows it to function with the broad consent of governments, peoples, organizations and other agents. An institution may derive its legitimacy from a variety of sources, among them established principles and practices of international law.

However, international legislation is not the only prerequisite for deriving legitimacy, for Clapham (2005: 195) international administrations also derive their legitimacy from the notion of a 'trust', which refers to a property-related relationship, whereby 'the trustee who holds the title to the property is subject to equitable duties to keep or use the property for the benefit of another', implying that international governance of a foreign territory can be legitimate only if that governance is perceived – locally and internationally – to be exercised on behalf of, and for the benefit of, the foreign population'⁹⁷.

⁹⁶ Ian Hurd (quoted in Coleman 2007: 23) has defined legitimacy as 'the normative belief by an actor that a rule or institution ought to be obeyed'.

⁹⁷ According to Burton (quoted in Said & Lerce 2006: 139) legitimacy is a dynamic condition which 'stresses the reciprocal nature of relations with authorities, the support given because of the services they render, and respect for legal norms when these are legitimized norms'. For Burton a peaceful society is one where the political and social order is perceived as legitimate.

3.3.3 Discourses on transitional administrations

Although indirectly this study has applied various discourses to the study of TAs, Wilde's classification of TAs is useful when examining and evaluating their peacebuilding activities.

Wilde (2004: 95-6) has suggested the following discourses for the evaluation of TAs⁹⁸: a progressive historical narrative (whereby Kosovo and East Timor are regarded as the 'pinnacle of an evolutionary process'), a 'post-conflict'/'state-building' exercise approach whose deficiency is that not all TAs are post-conflict endeavours, the 'failed state' approach, which reveals a skewed representation blaming 'indigenous factors' as the 'exclusive cause of the problems' to be addressed and the primarily technocratic approach towards TAs (as in social engineering), which ignores the political aspects involved.

Although in the previous chapters and sections on the study of TAs both the failed state approach and the progressive narrative approach to the evaluation of TAs have been mentioned with regard to the selected cases of Kosovo and East Timor, the two predominant approaches that are applied in the current study are the post-conflict dimension of peacebuilding and a critique of the primarily technocratic approach to peacebuilding.

3.3.4 Roles of transitional administrations

Throughout time TAs have had different roles assigned to them. The present section gives a brief account of the most common roles assigned to TAs since the League of Nations.

3.3.4.1 Dispute settlement

According to Wilde (2008: 242-3) one of the most important roles of TAs is to provide a mechanism through which a peaceful settlement of disputes can be reached, e.g. in the case of East Timor there was dispute settlement regarding the territorial status of the country and in Kosovo it was a case of establishing domestic political control.

⁹⁸ For Wilde (2008: 47) TAs can be partial or plenary, the former implying supervision and control of the operation by other (local) actors, and the latter referring the direct operation of the structure by international actors.

3.3.4.2 Implementation of settlements

Apart from settling disputes Wilde (2008: 245-274) attributes to TAs also the function to implement settlements (policies). Wilde identifies three clusters of areas where policy settlements are implemented: with regard to a territorial status and self-determination (Saar Basin, Danzig, South West Africa/ Namibia, Bosnia-Hertsegovina), statebuilding (when a territory is detached from a state, i.e. Kosovo and East Timor, or when a state breaks down, e.g. failed states – Somalia and Congo) and the exploitation of natural resources (Saar Basin, Timor Gap).

3.3.4.3 Promotion of international peace and security

TAs are also accredited with the role of promoting international peace and security, which is not surprising since most authors view TAs as peacekeeping missions (Wilde 2008: 273). Wilde (2004: 88-91), however, rejects the labelling of TAs as peacekeeping or peacebuilding missions for it signifies for him that, firstly, one is using the post-conflict argument and sometimes there are no conflicts to be solved and, secondly, it signifies a closed debate, focusing on what has been achieved in terms of security and conflict prevention without highlighting the expense at which it has been achieved – the denial of internal self-determination. Although Wilde challenges the idea that TAs may be peacekeeping missions, the truth is that all roles that the author has assigned to TAs (dispute settlement, implement settlements and promote international peace and security) involve conflict resolution and management. Therefore, this study agrees with the peacebuilding connotation ascribed to TAs, arguing that indirectly TAs have always been dealing with conflict resolution and settlement.

3.3.4.4 Governance

According to Kristensen (2006: 137) the most immediate task of international administrations is to ‘fill a governance vacuum’, and the second and more long-term task is to ‘reform the local administrative structures in order to remove the problem that led to the establishment of an international administration in the first place’. For Kristensen (2006: 138) international administrations are set up to deal with governance and sovereignty problems and he states that these two issues are often related in the

form of self-determination⁹⁹, e.g. the determination of the self and its ability to exercise self-government.

Chesterman has provided a useful typology of those cases where TAs have had to fill in governance vacuums. Chesterman (2004: 57-87) has depicted the following types of interim governments, undertaken by TAs:

- Decolonization - Final act of decolonization leading to independence (UNTAG in Namibia 1989-90 and East Timor 1999-2002 – UNTAET)
- Transfer of territory - Temporary administration of territory pending peaceful transfer of control to an existing government (UNTEA in Western New Guinea 1962-3, MINURSO in Western Sahara 1991-, UNTAES in Eastern Slavonia, Baranja and Western Sirmium 1996-8)
- Elections - Temporary administration of a state pending the holding of elections (UNTAC in Cambodia 1992-3)
- Peace process - Interim administration as part of an ongoing peace process without an end state (UNMIBH in Bosnia-Hertsegovina 1995-, UNMIK in Kosovo 1999-)
- State failure - *De facto* administration or responsibility for basic law and order in the absence of governing authority (ONUC in Congo 1960-4, UNOSOM II in Somalia 1993-5, UNAMSIL in Sierra Leone 1999-).

Clapham (2005: 17) distinguishes between various operational categories of international administration, claiming that on one end of the spectrum is supervision, as in Cambodia (UNTAC), and on the other end of the spectrum is direct governance - the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), the UN Interim Administration Mission in Kosovo (UNMIK) and the UN Transitional Administration in East Timor (UNTAET)¹⁰⁰.

⁹⁹ Freeman (2006: 169) introduces the notion of a liberal trusteeship based on Mark Duffield's 'liberal peace' notion which aims to 'selectively transform the dysfunctional and war-affected societies that it encounters in its borders into cooperative, representative and, especially, stable entities'.

¹⁰⁰ Clapham (2005: 18) acknowledges that with the three above-mentioned transitional administrations it was not the first time that the UN had been given a mandate to administer a disputed territory, the Organization was charged with administering a disputed territory in 1962-3 with the case of the UN Temporary Executive Authority in West New Guinea (West Irian) and the Congo (1960-64), moreover, such governance missions had also been planned for Organization in Trieste (1947), Jerusalem (1947) and Namibia (1967).

3.3.4.5 Summary

Thus, following Wilde's, Kristensen's and Chesterman's description of the roles and functions of TAs, one can conclude that there has been an indirect and direct reference to the institutionalization of peace and the settlement of conflict. Therefore, this study accepts to label generally the activities of TAs as peacebuilding.

The next section examines the historical predecessors of TAs, thus, undertaking a historical narrative, aiming to establish that irrespective of their more permanent character under the League of Nations (LoN), TAs have been essentially charged with the *ad hoc* assignments of peace promotion and peacebuilding among and within states.

3.3.5 Historical predecessors of transitional administrations

Even though most transitional administrations today are regarded as a novel practice, the truth is that comparisons with similar past experiences have always been made, in particular with two past systems of organization – trusteeships in the era of decolonization and the post-war reconstruction of Japan and Germany (Chesterman 2004: 11). Authors such as Chesterman (2004: 12) have illustrated a striking resemblance between the UN TA in East Timor and a trusteeship, pointing out that the origins of the East Timor dispute can be found in its 'long-delayed decolonization', on the other hand, the UN peace operation in Bosnia-Hertsegovina has been compared to the post-war occupation of Germany from 1945-9.

Similarly, Wilde (2008: 60) has argued that international territorial administration in Kosovo and East Timor is nothing new¹⁰¹: 'Whether the focus is on plenary or partial administration, international organizations generally or the United Nations in particular, the Kosovo and East Timor projects are not unprecedented in terms of the activity conducted and the actor¹⁰² performing this role are concerned'. For Wilde (2008: 60) Kosovo and East Timor follow on from the West Irian and the Eastern Slavonia projects. In this sense Wilde (2004: 80) rejects the old/new

¹⁰¹ Clapham (2005: 14, 16) contradicts Wilde by viewing territorial administrations as 'exceptional undertakings', being 'an innovation', and an '*ad hoc* one at that'. For Clapham (2005: 17) the twentieth century has 'created unique circumstances and constraints for the functioning of territorial administrations that distinguish them from any early practices – not the least being the multilateral character of today's administrations'.

¹⁰² At the San Francisco Conference of the UN in 1945 it was proposed that Chapter VII of the UN Charter be amended so as to allow the UN SC to administer territories when they are a threat to peace (Chesterman 2004: 50).

dichotomy that applies to peacekeeping and the distinctions between first-generation and second-generation peacekeeping by arguing that in the ‘new’ era of peacekeeping ‘old’ and ‘new’ elements coexist¹⁰³ and in this position he is not alone, but is supported also by Ratner (1995). Wilde (2008: 400) invokes four legitimating arguments of TAs that distinguish them from past projects of a similar nature and thus symbolize the novel elements of TAs: 1) the projects have been lawfully authorized, 2) the policies they implement reflect international law and are universally valid, 3) the projects are conducted by international organizations created through international law rather than individual states and are therefore humanitarian rather than exploitative, 4) the projects are temporary. Zaum (2006: 455) also states that TAs are not a new phenomenon, but instances of this practice go back to the League of Nations.

In the following section concrete attention to early TA projects is devoted in a chronological manner.

3.3.5.1 Administration by the League of Nations under the Treaty of Versailles

The Versailles Treaty of 28 June 1919 sought to establish conditions for international peace and security, it dealt with Germany in terms of reparations paid and territories ceased to the League of Nations administration, as well as with the future of the dependent territories of Empires that no longer existed (Ottoman and German). Thus, the Versailles Treaty was a direct attempt to punish the perpetrators of international peace and reinforce international peace and security.

The Saar Basin

After World War I the Saar Basin became an object of territorial dispute between France and Germany concerning the exploitation of natural resources in the Saar

¹⁰³ This statement contradicts major releases by the United Nations, such as the Brahimi Report (A/55/305 – S/2000/809, Para. 77), which notes:

These operations face challenges and responsibilities that are unique among United Nations field operations. No other operation must set and enforce the law, establish customs services and regulations, set and collect business and personal taxes, attract foreign investment, adjudicate property disputes and liabilities for war damage, reconstruct and operate all public utilities, create a banking system, run schools and pay teachers, and collect the garbage – in a war-damaged society... In addition to such tasks, these [transitional administration] missions must also try to rebuild civil society and promote respect for human rights, in places where grievance is widespread and grudges run deep.

Basin. The Versailles Treaty stipulated that Germany cede 'to France in full and absolute possession ... the coal mines situated in the Saar Basin' as a 'compensation' for the destruction of the coal-mines in the north of France and as a 'total reparation' for the damage done during the war (Art. 45). The League of Nations was to rule the Saar Basin through a Governing Commission appointed by the League of Nations and composed of five members (one citizen of France, one inhabitant of the Saar region and three citizens of countries other than France or Germany), which according to Article 49 were to rule the Saar Basin in the capacity of a trustee for 15 years (1920-1935), after which the inhabitants of the territory were to 'be called upon to indicate the sovereignty under which they desire to be placed' (French, German or a continuation of the status quo). In 1935 the League of Nations handed back the Saar Basin to the government of Germany as a result of the vote of the population.

The 'Free City' of Danzig

Under Article 100 of the Versailles Treaty Germany ceded to the Principal Allied and Associated Powers 'all rights and title over the territory comprised from the Baltic Sea southwards...' to include Danzig (now Gdansk) and under Article 102 'the Principal Allied and Associated Powers undertake to establish the town of Danzig... as a Free City. It will be placed under the protection of the League of Nations' (1920-1939). Article 103 provided the Free City of Danzig with its own constitution and a High Commissioner to deal with all differences between Poland and the Free City of Danzig. The League of Nations' governing authority ended in 1939 when the city was occupied by Germany.

Vilna (Vilnius)

Vilna (Vilnius), the ancient capital of Lithuania, had long been a source of dispute between Poland and Lithuania (which was unresolved by the Versailles Treaty). In 1920 the area was put 'under the supervision of the League of Nations', however, both Poland and Lithuania refused to cooperate with the League of Nations and at the outbreak of World War II the Soviet Union seized Vilna from Poland making it the capital of the Lithuanian Soviet Socialist Republic¹⁰⁴.

¹⁰⁴ Adopted from Ratner (1995: 96).

Upper Silesia

In Upper Silesia a mixed regime for an interim period (1920-1937) was established, whereby, both Germany and Poland concluded a Convention to allow for the free traffic of population across the new frontier, free exportation of coal in the region and protection of the cultural and linguistic rights of the respective minorities; a mixed Commission of two German and two Polish nationals was established to supervise the implementation of the agreement, the League retained a right to veto any laws from Poland or Germany concerning the region and remained a final arbiter in disputes concerning the Convention¹⁰⁵.

The Memel Harbour

Under Article 99 of the Versailles Treaty Germany renounced 'all rights and title over the territories included between the Baltic, the north-eastern frontier of East Prussia ... and the former frontier between Germany and Russia' to the Allied and Associated Powers. However, in 1923 Lithuania seized the port by a surprise attack and that is when the Port of Memel was declared of 'international concern' and a Memel Harbour Board (1924-1939) was established to govern it, comprising one Lithuanian, one person from Memel and one appointed by the League of Nations. However, in 1939 Germany seized Memel Harbour once again and ended the neutral governing of the territory through the League of Nations¹⁰⁶.

Leticia

Perhaps one of the most successful administrations of the League of Nations was in Leticia (1933-4), where the League got involved in order to solve a territorial dispute between Peru and Colombia. After an invasion and occupation of the Colombian town and region of Leticia in 1932 by Peruvian forces, the League decided that Peru would hand over the territory of Leticia to a Commission of the League for the period of one year which would, in turn, ensure the smooth return of the region to Colombia (Chesterman 2004: 24-5). According to Chesterman (2004: 25) this task was deemed as extremely successful due to the fact that during the one-year reign of Leticia by the League, the population increased fourfold.

¹⁰⁵ For more information consult Chesterman (2004: 21-2).

¹⁰⁶ The case of the Memel Harbour is also discussed by Chesterman (2004: 23) and Ratner (1995: 96).

Mosul and Alexandretta – aborted cases

According to scholars there have also been two aborted cases by the League of Nations: Mosul (a territorial dispute between Turkey and Iraq, back then under British rule) where in July 1925 the League of Nations rejected plebiscite as a possibility to draw a frontier between the two countries since there were no neutral elements in society and Alexandretta (a territorial dispute between Turkey and Syria, at that time ruled by France), where the League developed a peace plan to rule over the territory. Although the Alexandretta peace plan was initially accepted by both France and Turkey, subsequently both countries withheld cooperation and conducted their own elections, whereby Turkey won a majority in the Assembly and reunited the territory into its land (Ratner 1995: 97).

Summary

Thus, all cases of administration by the League of Nations under the Treaty of Versailles point to the neutral government formed by the League in an attempt to settle territorial disputes.

3.3.5.2 Mandates of the League of Nations

Apart from directly settling disputes between states, the League of Nations also constructed a Mandate system, whereby it delegated authority to the ‘advanced nations’ to tutelage those territories and colonies that were not yet ‘able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization’ (Versailles Treaty, Article 22). Tutelage was to be provided based on the reason and experience of the ‘advanced nations’, as well as on the geographical position and nearness to the ‘advanced nations’ and this tutelage responsibility was to be exercised by the advanced nations as ‘Mandatories on behalf of the League’ (Versailles Treaty, Article 22).

Article 22 of the Versailles Treaty distinguished between the different stages of development of communities – those belonging to the Turkish Empire (Class A

mandates¹⁰⁷) had reached a stage of development where ‘their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by the Mandatory until such time as they are able to stand alone’. The territories in Central Africa were to be placed under administration by a Mandatory (Class B mandates¹⁰⁸) and those states which were sparse in population, or small in size, or remote from civilization were to be considered as portions of the Mandatory’s territory without any suggestion of a subsequent alteration of the state of affairs (Class C mandates¹⁰⁹) (Versailles Treaty, Article 22).

Thus, only Class A mandates referred to a change of status, whereas Class C mandates were to be administered externally for an indefinite duration due to unchangeable factors (size of territory, population, etc.). Chesterman (2004: 15) suggests that the Mandate system was a ‘compromise between those who advocated outright annexation and those who wished to entrust the colonial territories to international administration’.

It is worth noting that the Mandate system of the League of Nations represented a continuation of previous protectorate¹¹⁰ policies of dependence that were established under international law. Under the Protectorate Treaty of 1912 of Morocco, France undertook to ‘exercise certain sovereign powers in the name of and behalf of Morocco’, another protectorate being the Sultan of Brunei and its protection by Great Britain, as well as the Solomon islands that were ceded from Germany to Great Britain in 1899 without local consent (Crawford 2007: 295-301).

However, with the end of the League of Nations due to the outbreak of World War II dependency policies of tutelage and protectorate did not come to an end. Notions of earned sovereignty and the ‘sacred trust of civilization’ continued also

¹⁰⁷ Class A mandates comprised territories of the collapsed Ottoman Empire and applied to Iraq, Palestine (both administered by Britain), Syria and Lebanon (administered by France); all these territories achieved independence by 1949 (Chesterman 2004: 14).

¹⁰⁸ Class B mandates comprised German colonies that were to be administered by a Mandatory, e.g. Tanganyika, parts of Togoland and the Cameroons (assigned to Britain), Ruanda-Urundi (handed over to Belgium) and the greater part of Togoland and the Cameroons (assigned to France) (Chesterman 2004: 15).

¹⁰⁹ Class C mandates applied to those German territories that were deemed as best administered as ‘integral parts’ of the Mandatory; within this category fell South-West Africa (integrated in South Africa), German Samoa (assigned to New Zealand), New Guinea (given to Australia), Nauru (Australia on behalf of the British Empire) and former German islands in the Pacific north of the Equator (Japan) (Chesterman 2004: 15).

¹¹⁰ Under protectorates, Crawford (2007: 286) understands an ‘unequal alliance’ between a superior state (protector) and an inferior state (protégé).

during the era of the Trusteeship system. Thus, the application of earned sovereignty persisted.

3.3.5.3 The UN Trusteeship system

The UN Trusteeship system represented a continuation of the League of Nations' Mandate system. Chesterman (2004: 15) notes that most of the League's Class C mandates were transformed into trusteeships and passed over to international administration, South Africa refused to transfer South West Africa to the Trusteeship system, which eventually ostracized South Africa from the UN system.

The Trusteeship system sought to promote the development of dependent territories and envisaged their administration by a neutral Trusteeship Council that was to accord independence to all territories. Article 76 of Chapter XII of the International Trusteeship System sought to further international peace and security and to:

...promote political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned.

Article 76 was also determined to 'encourage respect for human rights and for fundamental freedoms for all without distinction to race, sex, language, or religion'. In contrast to the Mandates system the Trusteeship system envisaged independence for all territories, irrespective of development and status¹¹¹. The 11 territories administered by the Trusteeship Council (Ghana, Somalia, Cameroon, Nigeria, Tanzania, Samoa, Rwanda, Burundi, Papua New Guinea, some Pacific Islands and Palau) all achieved independence by 1994 and since then the Council has been practically redundant (Chesterman 2004: 41). Crawford (2007: 580) points out that only two Mandates survived without being transferred to the Trusteeship system - Palestine and South-West Africa (Namibia).

Thus, with the Trusteeship system of the UN, the remaining mandates of the League of Nations were not only dealt with, but also more neutral governance for these territories was provided by the Trusteeship Council, providing specifically for the 'wishes of the people concerned' to be taken into account (Art. 76, UN Charter). The

¹¹¹ With the establishment of the United Nations system in 1945 approximately one third of the world's population (750 million) lived in territories classified as non-self-governing, by the 21st century that number had decreased to only one million (Chesterman 2004: 37).

Trusteeship system marked the gradual beginning of a process of concern with the interests and needs of the inhabitants of the dependent territories. A process that continued with the *Declaration Regarding Non-Self-Governing Territories* and eventually led to the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960).

3.3.5.4 Decolonization under the UN

The growing concern of the need to have government on behalf of the people can be witnessed in Article 73 of the UN Charter and the *Declaration Regarding Non-Self-Governing Territories*, which stated that the interests of the inhabitants of non-self-governing territories 'are paramount' and that member states 'accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories'¹¹². When Spain and Portugal joined the UN in 1955 and refused to provide a list of the non-self-governing territories¹¹³ within their possession (as required under Chapter XI of the UN Charter), the way was paved for an abrupt end to colonialism and the recognition of self-determination as a right and not a principle to be conferred, if certain criteria and conditions of development are met.

Thus, in 1960 the *Declaration on the Granting of Independence to Colonial Countries and Peoples* was adopted by the UN, which marked the transition from positive concepts of earned sovereignty to a negative concept of sovereignty as a right, equally endowed on all peoples existing within states¹¹⁴. With the *Declaration on the Granting of Independence to Colonial Countries and Peoples* the problems of statehood did not subside, but rather multiplied. Thus, the following period from the 1960s to the 1990s witnessed several undertakings by the UN that were not ordinary traditional peacekeeping missions between states, but were charged with peacebuilding within states.

¹¹² UN Charter/ Chapter XI: *Declaration Regarding Non-Self-Governing Territories*, Art. 73.

¹¹³ Noted by Chesterman (2004: 43).

¹¹⁴ This Declaration classified the subjection of peoples 'to alien subjugation' as a 'denial of fundamental human rights' and affirmed the right of all peoples to self-determination, 'by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development', the Declaration professed that 'immediate steps' will be taken to transfer all powers to the peoples of Trust and Non-Self-Governing territories and at the same time observe the 'national unity and the territorial integrity of a country' (A/RES/1514 (XV), Arts. 1-7).

3.3.5.5 Administration under the UN system

Zaum (2007), Wilde (2008), Chesterman (2004) and Ratner (1995) agree that there were several UN transitional administrations during the Cold War. Amongst these exercises of complex and multidimensional peacekeeping that undertake peacebuilding within a state are listed: the United Nations Transitional Executive Authority (UNTEA) in West Irian (West New Guinea) 1962-3, the United Nations Transition Assistance Group (UNTAG) in Namibia 1990-1 and the United Nations Operation in the Congo (ONUC, 1960-4).

United Nations Transitional Executive Authority (UNTEA), West Irian 1962-1963

West Irian formed part of the Dutch East Indies colony under the name of West New Guinea. In 1962 UNTEA¹¹⁵ was established to end a long-running dispute between the Netherlands and Indonesia over the western half of New Guinea (following an agreement signed by the two countries that acknowledges the right to a popular consultation). During the UNTEA period West Irian ceased to be a Dutch colony and administrative authority was transferred to the United Nations (Wilde 2008: 168-9).

United Nations Operation in the Congo (ONUC), 1960-1964

From 1960-4 took place the largest peacekeeping mission – the United Nations Operation in the Congo (ONUC), which forcibly restored order after the pullout of the Belgian authorities, dealt with the secessionist movement in Katanga and helped the central government assert control over the country¹¹⁶. The mission was charged with the ‘complete restoration of law and order in the Republic of Congo’ in order to ‘effectively contribute to the maintenance of international peace and security’¹¹⁷. The United Nations Force in the Congo was neutral and acted as a stabilizer, particularly in the Katanga region after the withdrawal of Belgian troops¹¹⁸.

United Nations Transition Assistance Group (UNTAG) in Namibia 1990-1991

¹¹⁵ For Ratner (1995: 110) UNTEA constituted the first true case of second-generation peacekeeping since, unlike ONUC, it was characterized by short duration, a clear and manageable mandate, consent of the two state actors, a stable internal situation and a unified internal governing authority – the UN itself.

¹¹⁶ According to Ratner (1995: 102) ONUC ‘represented the most assertive example of UN involvement to end a conflict and build a state’. Ratner (1995: 105) classifies ONUC as a ‘nation-builder’ that provided technical assistance to the Congo in constructing a functioning civilian administration after the hasty departure of the Belgian colonial officials.

¹¹⁷ S/RES/145.

¹¹⁸ See S/RES/146, Para.4.

The history of this mission goes back to the 1960s. When all other states administering non-self-governing territories had ended these mandate arrangements, South Africa (SA) refused to take action with regards to South West Africa (SWA), claiming that it is part of its sovereign territory and not purely its mandate as was the case. As a result, in 1966 the General Assembly (GA) declared that SA had ‘failed to fulfil its obligations in respect of the administration’ of SWA and consequently placed SWA under the direct responsibility of the UN. On 19 May 1967 the General Assembly established the United Nations Council for SWA in order ‘to administer SWA until independence, with the maximum possible participation of the people of the Territory’ with additional tasks of maintaining law and order in the Territory and ‘transferring all powers to the people of the Territory upon the declaration of independence’¹¹⁹ and provided for South Africa’s withdrawal¹²⁰. In 1968 the GA changed the name of SWA to Namibia; however the established Council of Namibia never took up its administrative functions due to the continued occupation of the territory by SA. In 1988 SA finally agreed to Namibian independence (achieved in March 1990) and after the UN supervised and controlled elections, SA withdrew and the United Nations Transitional Assistance Group (UNTAG) was established to exercise administrative functions with regards to the elections, but did not take over administrative control (Wilde 2008: 170-1).

Aborted Cases: Jerusalem, Korea, Kashmir

Jerusalem was another candidate to be ruled by the UN separately from the proposed Jewish and Arab states in Palestine: a partition plan was approved on 29 November 1947, which foresaw the Trusteeship Council as an executive authority. However, Israel and Jordan both refused to surrender control of their halves of Jerusalem from 1949-1967. Since 1967 and the Six-Day War, Israel has ruled out any internationalization of the city, which would involve Israeli withdrawal (Ratner 1995: 99).

In Korea the UN was supposed to set up a UN Temporary Commission on Korea (UNTCOK) established in 1947 with the aim to observe the elections and help the elected delegates to set up a government. However, North Korea and the Soviet Union refused to cooperate with UNTCOK. Respectively, the UN observed the

¹¹⁹ A/Res/2248, Section II, Para.1.

¹²⁰ Ibid, Section IV, Para. 3.

elections in South Korea in 1948 and after the elections the UN created a UN Commission on Korea (UNCOK) to assist in unifying the country, but the North refused to cooperate and the South objected to the mandate as interfering into the domestic affairs of South Korea. Later a further commission was created by the UN: the Commission for the Reunification and Rehabilitation of Korea (UNCURK), which was equally stifled by the stalemate on the peninsula (Ratner 1995: 100).

As British India was divided into India and Pakistan in 1947, this gave rise to a territorial dispute between India and Pakistan over Jammu and Kashmir (commonly known as the province of Kashmir) which had predominantly a Muslim population, but was ruled by a Hindu leader. In April 1948 the UN suggested a plebiscite as a way of settling the dispute, whereby the plebiscite was to be executed by a UN plebiscite administrator. By early 1949 India and Pakistan had agreed to a ceasefire to be supervised by the UN Military Observer Group in India and Pakistan (UNMOGIP); however India and Pakistan never agreed to the appointment of a plebiscite administrator (Ratner 1995: 100-1).

Post-Cold War Peacebuilding

Zaum (2007), Wilde (2008) and Chesterman (2004) have pointed out that the post-Cold War peacebuilding setting has been characterized by a significant expansion of the scope and depth of TAs. The most prominent 'complex peacekeeping missions' in the post-Cold War era have been: the United Nations Transitional Authority in Cambodia (UNTAC 1991-3), the European Union Administration of Mostar (EUAM 1994-6, which in 1996 was overtaken by the administration for Bosnia-Hertsegovina), the United Nations Transitional Administration in Eastern Slavonia, Baranja, and Western Sirmium (UNTAES 1996-8), United Nations Interim Administration Mission in Kosovo (UNMIK 1999-), United Nations Transitional Administration in East Timor (UNTAET, 1999-2002) and the United Nations Assistance Mission in Afghanistan (UNAMA, 2001-).

3.3.5.6 Reconstruction of Germany and Japan

Most authors agree that the post-conflict reconstruction in Germany and Japan, following the end of World War II, represents one of the most successful exercises of state-, nation- and peacebuilding.

Chesterman (2004: 30) distinguishes between three important events that took place in Germany and Japan after the end of World War II, namely state-building encompassing political reconstruction¹²¹, war crimes trials¹²² and the Marshall Plan¹²³ (economic assistance).

Pei and Casper (2003: 3) conclude that ‘societies that have a relatively strong national identity (such as Japan and Germany), high ethnic homogeneity¹²⁴, and relative socioeconomic equality are more suitable targets for nation-building. Moreover, Pei and Casper (2003: 4) note that previous experience with constitutional rule is a ‘crucial variable’. Furthermore, the authors pinpoint to the importance of effective state capacity, as well as the legitimacy of the international territorial administration and the alignment of the country with the interests of the nation-builder as important factors that contribute to the success of nation-building.

3.4 Conclusion

Thus, the present chapter has sought to delineate the development of the peacebuilding concept by illustrating not only the conceptual development of the term, but also the

¹²¹ In terms of political reconstruction specifically in Germany, Chesterman (2004: 30) notes that the Allied Powers in Western Germany granted the maximum possible degree of self-government consistent with occupation to the country and after the creation of NATO, Western Germany gained effective sovereignty in 1955 although allied troops remained; in the Eastern part of Germany, on the other hand, occupation from the Soviet Union was dissolved in 1949 when the country became the Democratic Republic of Germany, but Soviet troops remained.

¹²² In terms of the Nuremberg and Tokyo trials, Chesterman (2004: 34) points out that the adopted criminal system was applied only to the axis powers, excluding the Allies. Thus, for the author the Nuremberg trials have been ‘highly selective’ and their effect appears to have been ‘negligible’.

¹²³ Chesterman (2004: 35) ascribes the greatest success of post-war state-building to the Marshall Plan and the European Recovery Program, stating:

Between 1948 and 1951, Europe’s aggregate gross national product (GNP) jumped by a third, agricultural production increased 11 per cent, and industrial output increased 40 per cent over pre-war levels.

According to Chesterman the main reason underlying the huge success of the Marshall Plan was not due to the enormous flow of funds (\$11,8 billion in grants and \$1,5 billion in loans amongst 16 countries), but rather due to the fact that the nature of the assistance was multilateral and was being channelled through local institutions. Afghanistan and Bosnia-Hertsegovina (where far more has been spent per capita as under the Marshall Plan), by contrast, illustrate that funds alone are not enough to ensure a successful reconstruction (Chesterman 2004: 36-7).

¹²⁴ Pei & Casper (2003: 4) argue that ‘ethnically fragmented societies ... pose extraordinary challenges to nation-builders’ for different ethnic groups in the absence of a common identity (particularly those that have long been oppressed) may seek to gain more power or receive complete independence. Some nations, such as Haiti, may have social and political attributes (such as deep ethnic fissures, religious animosities, and high levels of inequality) which make them inherently resistant to political engineering by outsiders’.

historical predecessors of current transitional administrations. The analysis of the UN TAs predecessors has aimed to uncover that such undertakings are not entirely new practices in the context of international peacebuilding. By taking a historical narrative to the development and undertakings of TAs, it has become obvious that exercises of peacebuilding and dispute settlements, or decolonization, have seldom been neutral exercises. After World War I, the League of Nations undertook cases toward the territorial settlement of disputes and although there was a neutral Governing Commission established, essentially, the Versailles Treaty provided for the settlement of disputes of those countries that had not won in World War I – Germany and the Ottoman Empire. Thus, one can question whether the administration by the League of Nations under the Versailles Treaty was neutral. The subsequent Mandate and Trusteeship systems of the League of Nations and the United Nations ensured that the ‘standard of civilization’ is promoted by the ‘advanced nations’ without listing specific criteria that would signify a mandate or trust territory as developed. In contrast to these undertakings the TAs in both Kosovo and East Timor had well defined objectives in their mandates and made reference to specific benchmarks to be achieved that would define the state as developed. Having analysed the historical predecessors of UN TAs, this study rejects the parallels being drawn between TA territories and the pre-decolonization trustee and mandate territories. However, when examining the historical predecessors of TAs in terms of the activities performed, it has become obvious that TAs are not novel enterprises and their current mixed record of success is not a new phenomenon. The subsequent chapter will attempt to explain as to why that may be the case by undertaking a detailed literature review and formulating a research design that uncovers the intricate process of peacebuilding witnessed in Kosovo and East Timor.

4. RESEARCH DESIGN

4.1 Introduction

The aim of this chapter is to delve into the literature on peacebuilding and illustrate the existing research gaps. Subsequently, the chapter proceeds on to formulate and explain the research question and research propositions and finally comment on the choice of a theoretical framework for the comparison undertaken between Kosovo and East Timor. However, as a starting point, a general characteristic of the bulk of peacebuilding literature will be identified, namely, its preoccupation with structures and institutions, rather than local actors and their identities.

In the last decade, especially post-9/11, considerable attention has been devoted to the issues of state failure, peacebuilding and transitional administrations. However, most of the research done on international peacebuilding focuses on the macro dimension of analysis of transitional authorities, in other words, it is an analysis of what went wrong with a specific peacebuilding mission in hindsight, attempting to establish benchmarks for success of future missions. The bulk of the literature on peacebuilding is thus, predominantly descriptive and policy-oriented in nature. There have been few theoretical accounts of what constitutes peacebuilding and attempts to position it in a paradigm. Moreover, up till now, little attention has been drawn to the micro dimension of analysis and the pertaining to it problem of conflicting ethnic interests in the peacebuilding process¹²⁵. The absence of peacebuilding from international relations theory is identified also by Katharina Coleman (2007: 19):

Peace enforcement operations are understudied as a theoretical phenomenon. They have received intense scrutiny from analysts seeking to draw policy guidelines for future operations, but not from international relations theorists enquiring into the nature of the contemporary international system.

In a similar vein Gilady & Russett (2002: 394) point to the lack of preoccupation of International Relations with peacebuilding:

¹²⁵ King and Mason (2006) provide a descriptive analysis of ethnic conflict and UNMIK in Kosovo. Doyle & Sambanis (2006) offer a compelling argument about the importance of micro factors in peacebuilding.

Many theorists of international relations neglect peacemaking, leaving it to practitioners and to proponents of psychological and sociological approaches. The result is a literature with a relatively prescriptive and *ad hoc* case study approach that leaves a wide gap between it and mainstream concerns in international relations theory.

Thus, research with regards to peacebuilding and TAs has often been left to the practitioners and policy-makers, ignoring profound theoretical considerations of International Relations theory, such as the nature of the state being created or the nature of international society to which it has contributed. In those cases where research has been undertaken on a more theoretical level, aiming to go beyond 'lessons learned', there has been one feature dominating the research, namely the focus on external actors and their contribution to peacebuilding, in other words, research up till now in the sphere of TAs has been macro-oriented.

4.2 Literature review

This section delineates the predominantly macro-oriented literature on peacebuilding, however it also draws attention to the nascent trend within the literature to introduce local ownership in the peacebuilding process. Chapter two already devoted attention to the political and apolitical discourses on sovereignty and will formation as part of the philosophical debate about what type of a state should be constructed and how this should be done. This section builds on chapter two and aims to illustrate the multitude of alternative undertakings to describe the phenomenon of transitional administrations in peacebuilding.

4.2.1 Apolitical approaches to peacebuilding

Apolitical approaches to peacebuilding have been advocated widely in the peacebuilding literature. These approaches rest on the assumption that since most institutions in a society have failed, it would be counterproductive to have local actors and groups play a dominant role in the peacebuilding process. Peacebuilding is viewed as a technical exercise of institution-creating and social engineering that is supposed to establish, first and foremost, a functioning rule of law system before democratization and liberalization of society can take place.

Research has been made on the inadequacy, contradiction and inconsistency between the means and ends of transitional administrations (Chesterman 2004), yet although Chesterman (2004, 2007) has commented on the contradiction between external objectives and means employed by TAs, he has continuously stated that local ownership should be treated only as an end in peacebuilding¹²⁶. Pouligny, Chesterman and Schnabel (2007: 15) claim that ‘peace-building is not a linear process’; peace must be ‘re-imagined’, even ‘re-invented’ after mass crime. However, Chesterman, Ignatieff & Thakur (2005: 2) argue against domestic politics when it comes to peacebuilding: ‘one of the most important requirements for making states work ... is the creation of apolitical bureaucratic structures’ which are to support the role of a neutral state that will maintain social order through the rule of law. Thus, the authors declare that a neutral and functioning state should be based on apolitical bureaucratic structures.

This argument has also been emphasized in the ‘*Institutionalization before Liberalization*’ (*IBL*) strategy of Paris (2004: 187), which has stressed the need to construct effective institutions before the creation of democracy and market competition, thus excluding local actors from the peacebuilding process. The strategy proposed by Paris rejects the paradigm of liberal internationalism¹²⁷ according to which the ‘surest foundation for peace, is a liberal democratic polity and a market-oriented economy’. Paris (2004: 7) advocates not a quick democratization and marketization that can result in ‘shock therapy’ but a gradual and incremental approach to liberalization, accompanied by the construction of governmental institutions that can manage political and economic reforms, and views the operations in Bosnia, Kosovo and East Timor as moving in the direction of *IBL*.

In a similar fashion, Ottaway (quoted in Papagianni 2007: 256) suggests that peacebuilding should take away power from national spoiler elites and should avoid

¹²⁶ Chesterman (2004: 239) states that such attempts to create political culture under benevolent autocracy illustrate the inconsistency of means with ends, on the one hand, and the irrelevance of means to ends, on the other. Such means have been inconsistent with the ends because the pledged financial assistance from states has often proved inadequate; such means have also been irrelevant with the ends because the whole discussion of the idea of TAs depending upon the consent of ‘ownership’ of the local population has proved to be counterproductive and inaccurate – inaccurate because if ‘genuine local control were possible then a transitional administration would not be necessary’ and counterproductive because ‘insincere claims of local ownership lead to frustration and suspicion on the part of local actors’.

¹²⁷ Paris (2004: 168) refers to the limits of Wilsonianism, meaning that democratization and marketization might be more disruptive than stabilizing for post-conflict societies due to the following conditions: 1) intense societal conflicts are already in place, 2) such societies lack natural ‘conflict dampeners’, particularly a tradition of non-violent dispute resolution and 3) lack of effective government institutions that might contain and manage the pathologies of liberalization.

the rush imposition of new institutions in fragile societies since they may be incapable of competing with other sources of authority within society, such as ethnicity, military power or previous institutional arrangements.

Clapham and Ignatieff both acknowledge that, although there is a greater need for local input, the reality of peacebuilding has been an apolitical and predominantly supply-driven exercise. Clapham (2005: 86) reiterates that ‘civil administration is closely related to two other functions of the international administration of war-torn territories: local capacity-building and political institution-building’. However, Clapham (2005: 87) also delineates the dilemma of building local capacity: ‘international authorities often rely principally, if not entirely, on international agencies and personnel for the execution of their mandate, especially in the early days of an operation when emergency conditions prevail and local actors are either inexperienced or not known to be both capable and trustworthy’. The result envisaged by Clapham (2005: 87) is that ‘international authorities may be insufficiently receptive to local input and tend to favour their own agencies and service-providers to the detriment of the development of local capacity’. Clapham (2005: 99-105) argues that both in Kosovo and East Timor the UN favoured a ‘phased approach’ of capacity-building, leading from transitional administration to co-administration and finally self-administration (in Kosovo it was a process of transition from a Joint Interim Administrative Structure to Provisional Institutions for Self-Government). With regard to political institution-building in both Kosovo and East Timor the Kosovo Transitional Council (KTC) and the National Consultative Council in East Timor (NCC), later to be succeeded by the National Council (NC), were set up, the problem being, however, that their members were appointed and not elected (Clapham 2005: 115). Ignatieff (2003: 92) classifies nation-building since the end of the Cold War as a ‘multibillion-dollar business’ and sees within it the ‘grains of imperialism’¹²⁸. Apolitical approaches to peacebuilding have been contended by the advocates of political peacebuilding.

¹²⁸ Ignatieff (2003: 114) states:

Ruling peoples with a view to preparing them for self-government, is a very old function of empire. The British began preparing their white colonies for self-government in the 1840s, and even when Canada became a self-governing dominion in 1867, it remained a part of the British Empire.

4.2.2 Political approaches to peacebuilding

In contrast to the apolitical theorists, scholars advocating political peacebuilding have stressed the quintessence of the political process of participation and will formation and have, thus, argued for resolution to societal problems from within.

Chandler (2006) has emphasized the absence of the political process (stemming from society) in current statebuilding initiatives, and has dubbed such endeavours as 'statebuilding without politics' and 'peace without politics', which for him represent an 'empire in denial' approach to statebuilding.

There has been 'little theoretical engagement with statebuilding as a policy framework' stipulates Chandler (2006: 4-5), for the majority of work facing international administrative assistance has taken the form of 'lessons learned reports' which repeat generic technical problems of assistance and form part of a problem-solving approach in line with the critical theory of Robert Cox¹²⁹.

Chandler (2006: 7) takes a step back from the dominant problem-solving approaches to state-building and poses the fundamental question as to what are the changing perceptions of the importance of political engagement and the political sphere itself, he questions what is the driving force behind the drawing of Western governments on the language of empowerment and capacity-building, instead of sticking to the traditional discourses of democracy and the market. Chandler (2006: 7) argues that the questions raised by external state-builders go to the heart of the nature of politics today – he claims that the consensus that most people can be better governed with support from external experts and capacity-builders 'highlights the diminished view of the importance of politics, of the importance of self-government and political autonomy', which means that the role of politics is being questioned. In a similar vein, Chandler (2006: 48) has denied the existing politics of international statebuilding by claiming that the privileging of governance over government has promoted 'institutional changes at the state level' whilst disregarding 'how societal pressures and demands are constitutive of stable and legitimate institutional mechanisms'. Consequently, Chandler depicts local involvement in the political

¹²⁹ Chandler (2006: 6) classifies Roland Paris' *Institutionalization before Liberalization* strategy and Michael Ignatieff's *Empire Lite* approach as such. Chandler (2006: 6) views the problem-solving approaches to statebuilding as being dominant in the field of international relations, in the light of the proposed 'neo-trusteeship', 'guided sovereignty' and 'shared sovereignty' (Krasner 1999 & 2004, Keohane 2002 & 2003; Fearon & Laitin 2004).

process as imperative, if democracy and the capacity for self-government are to be constructed. Thus, Chandler (2006: 7-8) delineates a shift from traditional approaches to international politics to a post-political regime of empowerment and capacity-building in the post-Cold War era, which signifies a crisis facing Western political elites – a crisis of self-belief and a crisis which leads to the denial of power or *Empire in Denial*. Chandler (2006) argues that perhaps it would have been easier to treat statebuilding merely as a mechanism designed to enforce Western self-interests (classical Empire) for in that case it would have been easier to see who is accountable – in the case of *Empire in Denial* the Western powers deny their power and consequently, their accountability, and that is where the danger sets in.

Similar to Chandler, Cunliffe (2007) and McCormack (2007) have argued for a political approach to peacebuilding, claiming that depoliticizing human individuals deprives them of their decision-taking abilities and accordingly, the political sphere is one where politics and sovereignty developed and it is the political sphere that should yield any type of solutions to state failure. Cunliffe (2007) and McCormack (2007) have made the point that by depoliticizing the individuals and their human security one loses also on their ability to act as decision co-makers and co-takers. In a similar vein, Bickerton (2007: 93) has claimed that ‘removing popular will from the process of political creation, as state-building does, produces hollow institutions with shallow roots in the societies for which they are being built’.

Thus, a debate has shaped within the peacebuilding literature with regard to whether peacebuilding should stem from the apolitical sphere (by promoting institutions and the rule of law in the absence of local involvement) or whether it should be an entirely political exercise (stemming from a sovereign society). This debate has often taken the form as to whether state institutions or society should precede each other in peacebuilding¹³⁰. Either way, this debate has demonstrated that analysts have focused on different spheres of analysis of TAs and peacebuilding, however, they have rarely commented on the interplay between different levels of analysis of peacebuilding. In other words, the proposed solutions to peacebuilding

¹³⁰ This controversy is also noted by Honig (2007: 1), who claims that if deliberative democrats (Benhabib, Habermas) see institutions and constitutionalism as safeguards that protect democracy’s norms from the people who could betray them and thus conflict with human autonomy; for the social contract theorists (such as Rousseau), who emphasize popular sovereignty, the good man precedes the good law. The question of whether the good man or the good law comes first has also been witnessed in the outlined debate between proponents of and opposers of local ownership of peacebuilding.

have been either entirely macro-oriented or merely micro-oriented. There have been few attempts to synchronize the two. A concept that suggests a synchronization of the political with the apolitical in peacebuilding has been local ownership.

4.2.3 The move towards local ownership in peacebuilding

Lately, studies containing the notion of ‘local ownership’ have occurred, stressing not only the importance of structure and institutions, but the importance of local participation and cooperation in the peacebuilding process (Reich 2006, Narten 2007). These studies have offered an alternative to the apolitical-political debate of peacebuilding and have also tried to fill in the identified ‘substance’ gap within the peacebuilding literature, as recognized by Talentino (2007: 152-3; 156):

Strangely, however, the role of local perceptions in contributing to the success or failure of peace reforms is relatively understudied. A wealth of research focuses on the intractability of conflict and examines ways in which external actors can change that dynamic... But there is very little attention to what seems to be an essential building block of peace, the perceptions of local citizens and their willingness to support reform... Even the most well-constructed international reform effort will be a failure if citizens do not perceive it as legitimate, or if they consider it weak and ineffectual... Institutions command authority by being responsive to their citizens and by demonstrating effectiveness.

The study of Talentino (2007: 167) claims that ‘peace-building is more than a technical exercise in creating political structures; it is also about teaching people to believe’¹³¹. Talentino (2007: 156) qualifies the bulk of the peacekeeping literature as focusing on the process of statebuilding and emphasizing processes, rather than attitudes, structures rather than individuals. For Talentino (2007: 167) it is important to teach people to believe and she classifies ‘local response’ as an ‘important ingredient to international success’. Thus, Talentino (2007) emphasizes the importance of attitudes, mindsets and beliefs when discussing peacebuilding and trying to position it within a paradigm, the juxtaposition of attitudes against structures and processes is an attempt to escape the dominant view of peacebuilding, which is preoccupied with effective institutions, without analyzing whether they have conquered the will of the locals and safeguarded their trust in the reforms undertaken.

¹³¹ This conclusion comes close to the definition of legitimacy provided by Max Weber (1978) who understood the term as ‘Legitimitätsglaube’, meaning that legitimacy can be defined by the belief in authority and legitimacy.

Another author that has stressed the importance of local inclusion is Papagianni (2007: 254), who argues for inclusive processes of deliberation before elections (in terms of consultative bodies) and transitional governments in order to lend legitimacy to state institutions. Papagianni (2007) elaborates that statebuilding is a political process and can only last if it emerges out of existing social forces and represents real interests and real clashes of interests.

For Narten (2007: 4) local ownership is an indispensable term and a *conditio sine qua non* of international statebuilding. Nevertheless, Narten (2007: 6) identifies three key dilemmas to the promotion of local ownership: external intrusiveness¹³², local dependency¹³³ and the spoiler problem¹³⁴. Narten advises for an early concentration on local reproductive resources and in investing more in educational projects in order to meet the ‘do no harm’ principle.

Kühne et al. (2008: 8) have stressed the need to have local ownership as a means to an end and not only an end in itself, as envisaged by the apolitical proponents of peacebuilding, due to the normative imperative of sovereignty and self-determination and the fact that peacebuilding is a not static or linear process. The authors have, thus, concluded that it is important to build local ownership capacities over time.

Subsequently, this study views the concept of ‘local ownership’ as being able to incorporate the beliefs, attitudes and identities of actors into the political process and

¹³² Activities of external statebuilders (Narten 2007: 7) are defined as intrusive if they do not allow for input, consultation and, at a later stage, control by local stakeholders in all phases of the project cycle management; thus statebuilding measures will be less intrusive if they are not imposed but reached in consensus. However, Narten acknowledges that a certain degree of external intrusiveness is unavoidable in societies that lack the local capacities for self-government. Thus, Narten treats local ownership as a goal, as well as a means to an end of statebuilding. Narten (2007: 9) states that when liberal peace is imposed too rapidly from outside it can be destabilizing, as mentioned by Roland Paris – there is a need for institutionalization before liberalization, therefore the normatively-oriented liberal peace doctrine based on the principles of democracy, human rights and the rule of law might not always be the key to statebuilding.

¹³³ Young educated people prefer to work as drivers for the international staff rather than as local teachers, doctors or engineers (Narten 2007: 13), this ‘brain drain’ aggravates the local dependency on external assistance and at the same is situated predominantly in the urban industrialized areas.

¹³⁴ Narten (2007: 15) identifies the third dilemma of international organizations as the lack of knowledge beforehand as to who will be their partner in the state concerned – thus, it might be through statebuilding that internationals are actually empowering the spoilers, former entrepreneurs of violence. According to Narten (2007: 16) a tendency develops, resulting from spoilers, dubbed as picking the winners from losers – winners are those that have a Western orientation or education. For Narten (2007: 34) the March 2004 riots in Kosovo demonstrated the ease with which spoilers can arise within the peace process.

structures of peacebuilding initiated by TAs, bridging the apolitical with the political discourses on peacebuilding and providing a middle ground thereof.

Together with the identified gap on local perceptions and approaches to peacebuilding, this study has also identified a research gap with regard to the initial causes of war or conflict.

4.2.4 Peacebuilding literature on the initial causes of conflict

Strangely, the initial causes of conflict¹³⁵ or state failure and their potential detrimental effect to the building of peace remain understudied in the bulk of the peacebuilding literature. Although attention has been devoted in recent studies to the need for peacebuilding initiatives to be locally owned and inclusive, as specified by Reich (2006), Narten (2007) and Talentino (2007) – little attention has been devoted to the possible hindering effect of the attainment of locally owned peacebuilding endeavours when the post-conflict society in question has been and continues to be ethnically divided¹³⁶.

This idea has also been supported by Mac Ginty & Robinson (2001: 26) who claim that despite the immense literature on peacekeeping in the post-Cold War era, little attention has been dedicated to ‘the nature of the conflict and the violence to which peacekeeping and its successor types have been applied’, the authors state that ‘to be effective, techniques used to manage and ameliorate the effects of ethnic conflict require a sophisticated understanding of the nature of the conflict and violence involved’. The thesis that Mac Ginty & Robinson (2001: 26) defend is that ‘peacekeeping in its traditional form, is often an inappropriate form of intervention in cases of ethnic conflict’, instead the authors favour smaller-scale, multiple interventions such as human rights monitoring and confidence-building measures. In

¹³⁵ Cockell (2000: 21-3) contends that successful peacebuilding addresses the root causes of violent conflict and is context-specific, involving indigenous societal resources and thus views it as an associative process of engagement.

¹³⁶ Although there is a bulk of literature focusing on the role of ethnic minorities in the democratization process and the continuing of war (Harff & Gurr 2004, Lake & Rothschild 1998, Lijphart 2004), on ethnic minorities and their role in increasing economic dependence (Horowitz 1985), there seems to be little focus from the international community on the core problem of post-war societies, namely their ethnic divisions and the influence that these divisions continue to play in post-conflict reconstruction; a phenomenon which might be due to the fact that previous experience with post-conflict reconstruction in Japan and Germany dealt with ethnically homogeneous societies. King and Mason (2006) mention the role of ethnic conflict when analysing Kosovo. Jeong (2005: 82) acknowledges that political transition is more difficult when divisions create tensions between the communities and Doyle and Sambanis (2006) pay attention to the detrimental role that hostility (including ethnic conflict) plays in promoting positive peace.

essence, this study demonstrates the role that conflicting (ethnic) interests (as witnessed in Kosovo) play when examining the success of peacebuilding initiatives.

Pouyé (2005: 9) has analysed nation- and state-building in Kosovo and East Timor within the time-frame of 1974-2002 and has focused on the interaction of three main factors in the discourse on statehood and nationhood: 'the social competition between urban and neo-traditional actors, the recourse to violence and the changing perceptions on the norms of intervention'. Thus, Pouyé has undertaken an analysis that attempts to uncover the local dimensions of conflict.

In a similar approach Doyle and Sambanis refer to the importance of hostility levels and local capacities when promoting sustainable peace. Doyle & Sambanis (2006: 334) note that peacebuilding is likely to be harder to achieve in highly factionalized societies. For Doyle & Sambanis (2006: 18-19) a measure of successful peace combines 'negative' or 'sovereign' peace (meaning that sovereignty has been re-established and there is a monopoly on the control of violence) with 'positive' or 'participatory' peace (based on participation and one that depends upon whether the postwar state has entered a path toward democratic civil peace). Doyle & Sambanis (2006: 4) have established the interdependent logic of a peacebuilding triangle¹³⁷: 'the deeper the hostility, the more the destruction of local capacities, the more one needs international assistance to succeed in establishing a stable peace'. In their framework of assessing UN assistance in civil war-torn lands, Doyle & Sambanis (2006) argue that 'sustainable peace'¹³⁸ is a measure for successful peacebuilding. For Doyle & Sambanis (2006: 4) the success or failure of peacebuilding is influenced by three key factors: 1) the degree of hostility between the factions, 2) the extent of local capacities remaining after the war and 3) the amount of international assistance. The authors also

¹³⁷ Doyle (2007: 3-4) refers to the peace triangle that he himself and Nicholas Sambanis set up in 2006 and claims that this triangle explains 75 percent of all success or failure cases in peacekeeping and fails only 25 percent of the time. According to Doyle the triangle is a metaphor for peacebuilding space after civil war, this space is determined by the triangle's three sides: local capacities, international capacities and the hostility level. The greater the local and international capacities are and the smaller the hostility level, the greater will be the space for peace. Doyle defines the logic of the peacebuilding triangle in three steps: 1) 'the more hostile and numerous the factions, the greater the casualties, refugees and displaced persons generated by war'; 2) 'the poorer the country and the greater the damage done by war, the more lootable the remaining resources and the more inaccessible the terrain', 3) 'the greater the international authority, the peacekeeping presence and troops, the larger the reconstruction budget must be if peace is going to be achieved and maintained after the peacekeepers leave'. For Doyle the area of the triangle represents the prospects for peace.

¹³⁸ For Doyle & Sambanis (2006: 91) the sustainability of the peacebuilding exercise measured cannot be assessed while the peacekeepers are still there: 'if the cop must be continuously present, then the underlying conflict has not been resolved'.

engage with the measurement of ethnic conflict under the rubric of ‘hostility between factions’. Doyle (2007: 2) argues that ‘peacebuilding is designed to build confidence among parties, facilitate institutional reform, demobilize armies, and assist the reform and integration of police forces and judiciaries’ and according to these criteria he classifies El Salvador, Cambodia, Namibia, Mozambique, East Timor and Sierra Leone as considerable successes. Doyle and Sambanis (2006: 27) provide a rationalist argument, engaging basic insights from game theory, to explain ‘the conditions under which different types of peacekeeping intervention promote peacemaking and peacebuilding’. Rationalist analyses have dominated the peacebuilding literature.

4.2.5 Rationalist accounts of peacebuilding

The bulk of the peacebuilding literature has been rationalist in orientation, trying to establish conditions of success with hindsight for the peacekeeping/ peacebuilding missions up till now. The majority of the writings have espoused a ‘lessons learned’ approach. However, by applying the success/ failure dichotomy of peacebuilding, the bulk of literature has concentrated predominantly on the macro level of analysis and the missions’ structure *per se* rather than delving into the local dimension of analysis and moreover, the majority of writings and reports have remained descriptive in nature, seldom applying a theoretical framework or proposing a general theory of peacebuilding success or failure.

The causes and consequences of state failure have been illustrated by Rotberg (2004). Links have been made between local factors (political parties and effective leadership) and external factors (early warning and prevention, exit strategies, clear mandates) in the aim to promote successful peacebuilding (Chesterman, Ignatieff and Thakur 2005).

Pushkina (2006: 133) ascribes mission success to macro factors by claiming that ‘mission success is tied to UN commitment, absence of external support for belligerents, successful diplomatic efforts and a low degree of mutual antagonism’.

Clapham (2005: 230-250) emphasizes the importance of adequacy of resources, improved communication and coordination between the various UN departments, the importance of a rapid and effective deployment as well as political factors, such as democratic development, multiethnic society, peaceful coexistence, political diversity when promoting successful peacebuilding.

Aksu (2002: 24) continues the strain of rationalist thinking and argues that success presupposes two things: 1) how closely outcomes match objectives set, 2) are the chosen instruments adequate for the attainment of success.

For Jeong (2005: 35) the success of peacebuilding is defined as the meeting of common benchmarks stipulated as goals and objectives in the peace agreement; maximum success entails positive peace, minimal – negative peace.

Caplan (2007: 315) claims that the most important factors contributing to stable peace is to create an environment of stability and trust in the first six to twelve weeks after ceasefire.

Lipson (2007: 79) has applied a ‘garbage can model’ to explain changes in peacekeeping as a result of linking the policy entrepreneur’s solution (peacekeeping) to a problem (intrastate conflicts) in the context of a policy window opening with the end of the Cold War¹³⁹.

Apart from providing rationalist explanations to the success or failure of peacebuilding and peacekeeping missions, there have also been constructivist considerations of TAs and their peacebuilding endeavours.

4.2.6 Constructivist accounts of peacebuilding

Zaum (2007) has explored sovereignty in the international system in a normative way. He (2007: 1) has noted that ‘few comparative studies of state-building by international administrations exist’ and has claimed that the literature up till now has predominantly focused on the ‘mechanics’ and the effectiveness of statebuilding, and on the requirements for success (Caplan, Chesterman), there has been very little discussion about the nature of the ‘international community’, represented by international administrations in the respective territories. Thus, Zaum explores the impact of norms on policy-making, particularly the norms associated with sovereignty. Zaum (2007) introduces the term ‘sovereignty paradox’ to characterize the activities of international administrations, namely that they attempt to strengthen a democratic right to self-governance by initially denying it to the local population.

¹³⁹ This method analyses an institution as an ‘organized anarchy’ based on three characteristics: problematic preferences, unclear technology and fluid participation, implying that the choice opportunity within an organization depends on the various problems and solutions dumped in a garbage can by the participants as they are generated – the whole model has a temporal setting and its value added is the ability to explain how peacekeeping evolved as an entrepreneur solution to intrastate conflicts with the end of the Cold War.

Bull (2008) has analysed the rule of law as a normative value scheme that is deeply constitutive of the political and social order that statebuilding missions have sought to establish. Bull treats the rule of law as a value scheme that constitutes peace and stability, develops democratic institutions, protects human rights and supports development and justice. Bull (2008) analyses the UN state-centred approach to building the rule of law and speaks of creating a 'space' for local actors to develop within and function, on the contrary, failure to create such a space results in 'crowding out' of local actors and the author states that successful strategies are not those that are overambitious, but those that strike a trade-off between the local capabilities and commitment, and a 'lofty' UN definition of rule of law.

Knudsen & Laustsen (2006) have analysed the challenges and dilemmas that the international community has encountered in Kosovo when constructing effective, inclusive and accountable local institutions and pose the question as to whether international trusteeship is the way forward. They (2006: 12) argue that one is witnessing the birth of '*ad hoc trusteeship arrangements*'. For Knudsen & Laustsen (2006: 12) the standard of success for trusteeships becomes 'to provide for the introduction of the "good life" in a place where this has not been a part of reality for long periods of time'; as challenges to the introduction of good life the authors identify nationalism and revenge, local governance and education, crime, capitalism and securitization, self-determination, future status and the dual function of trusteeship.

There have also been accounts of peacebuilding via TAs that are descriptive, historical or explorative in nature and these have been listed in the next sub-section.

4.2.7 Various accounts of peacebuilding

Numerous authors have provided a historical account of the development of peacekeeping missions (Rossbacher 2004; Ratner 1995; Smyrek 2006; Smith & Dee 2003). Wilde (2008) has analysed international territorial administration as an institution, claiming that it is no novel exercise, and has sought to question the underlying assumptions of international territorial administration by looking into the past endeavours of a similar nature.

TAs have also been likened to 'government out of a box'. Von der Schulenberg (2004: 2) speaks of 'Government out of a Box' (GooB) as a tool for peacebuilding

operations which can facilitate the construction of a local civil service that possesses the resources and capacity to mobilize local talent and respond to local needs.

Other authors have emphasized the issue of trust and accountability when analysing TAs and their endeavours. On the role of democratic demand and supply has been commented by Fukuyama (2004). The issue of trust and accountability in international protectorates/ trusteeships has been analysed by Caplan (2002, 2005).

Tschirgi (2004) has examined peacebuilding from a development perspective, stressing the role of underdevelopment of failed states (Tschirgi 2004).

Brenner et al (2007: 4) have suggested that ‘organizational learning’ is the missing link between the imperative of *ad hoc* missions and the need for permanent engagement of successful peacebuilding missions.

O’Dwyer (2006) has used the term of ‘runaway state-building’ in order to describe the statebuilding practices in post-communist states with a view of their inclusion in the EU; he has stressed the importance of reintroducing electoral competition and the imperatives of party-building in post-communist states.

The present literature review demonstrates that the undertakings towards the study of peacebuilding via TAs have been numerous and diverse, providing different vantage and starting points for the analysis of such endeavours.

4.2.8 Summary

The multitude of literature on the subject has demonstrated that the task of the peacebuilders has, indeed, been a complex one – to create institutions and conditions that will sustain peace in the country. The paths suggested to sustainable peace have been numerous. Nevertheless, the following research gaps have been identified in the literature with regard to the analysis of peacebuilding via TAs.

Firstly, there has been a preoccupation with whether peacebuilding and the reconstruction of failed states and post-conflict societies should be apolitical or political in nature, with too little emphasis on a possible interplay or synchronization of both macro and micro factors that can contribute to lasting peace.

Secondly, the hesitancy on behalf of international peacebuilders to espouse local ownership due to the question of trust and the identified dangers of spoilers have led to the establishment of Paris’ *IBL* strategy as a dominant one, which has undermined not only the political dimension of self-government, as already pointed out

by Chandler (2006), but has also led to the ignorance of the root causes of conflict and state failure. The dominant *IBL* strategy has led to the establishment of a ‘one size fits all’ approach to peacebuilding concerned with the construction of democratic institutions and the rule of law, rather than the democratizing of society and the tackling of problems pertinent to the particular society in question.

Thirdly, the predominantly macro-oriented literature of peacebuilding has also been primarily rationalist in orientation with few constructivist accounts on the possible constitutive effects of macro, meso and micro factors in a particular setting.

Fourthly, there has been little engagement with the discipline of International Relations and attempts to position the findings of peacebuilding studies within a paradigm. Reasoning has been deductive, pondering on the merits of democratic and liberal peace (Paris, Chandler), or inductive, drawing ‘lessons learned’¹⁴⁰ for future missions, but with few theoretical implications outside the policy-dominated realm of peacebuilding. Simultaneously, reasoning has been macro-oriented, meaning that it has been preoccupied with the structures of peacebuilding and less so with the dynamics and interactions between peacebuilders and peace-bearers¹⁴¹.

The identified gaps within the literature on peacebuilding have led to the formulation of the research objectives of the present study.

4.3 Research objectives

Bearing in mind the above-mentioned shortcomings of the existing peacebuilding literature, the current study hopes to offer an alternative answer to the pitfalls identified, by achieving the following research objectives:

Firstly, the study strives to enrich the peacebuilding literature in International Relations by incorporating strains from development studies in terms of introducing the concept of ‘local ownership’. This study aims to enrich the existing literature on

¹⁴⁰ Refer to Dobbins et al. (2003, 2005, 2007) for more detail.

¹⁴¹ As illustrated, the bulk of the peacebuilding literature has preferred to deliberate on the macro (international) level of analysis and concentrate on the adequacy and success of the TA structure itself (sufficient personnel, clear mandate and objectives set, financial capability) rather than to analyse this TA structure in relation to local and national factors and dilemmas, and analyse whether such a structure (TA) is capable of changing local perceptions and the root causes to a conflict. Indeed, few studies have dared to investigate the interplay between various levels of analysis and the importance of the local dimension when discussing peacebuilding. This has been the case due to the fact that the failed state dimension in peacebuilding has been a powerful one, leading oft to the neglecting of local solutions for fear that the end result will be a failed state once again.

peacebuilding by also taking into account the inclusive/ effective dichotomy towards the study of international institutions in a global arena, and combining this approach with existing political accounts of peacebuilding that emphasize the need for local solutions to societal problems. Subsequently, the study hopes to bridge the existing apolitical and political discourses on peacebuilding by offering a middle ground that incorporates both the local and international dimension of peacebuilding via TAs.

Secondly, the study proposes the analysis of success of TAs and peacebuilding not in terms of the end goal achieved – positive or negative peace promotion, for in that sense it might be too soon to judge the implications of the complex peacebuilding in Kosovo and East Timor. Instead, this study examines the success of a TA and its peacebuilding exercise at a step preceding the achievement of sustainable peace. This study examines the success of the peacebuilding process initiated by TAs in terms of their ability to transfer power to the local population and achieve local ownership. Local ownership is thus seen as a precondition for sustainable peace and the avoiding of a relapse to violence. The process of local ownership achievement, characterized by an interplay between micro, meso and macro factors, is analyzed employing the qualitative research method of process-tracing¹⁴². In doing so, the black box of peacebuilding via TAs (which until recently has predominantly been left to the execution of international peacebuilders) is opened and success is analysed as a staged variable, rather than merely employing a success/failure dichotomy.

Thirdly, by focusing on the process of local ownership creation and the interaction between the different levels of analysis, it is hoped that the proposed *Space for Local Ownership of Peacebuilding (SLOP)* model will be able to shed light onto the research puzzle as to why some peacekeeping missions are successful in terms of leaving a country and why others never seem to end. Thus, it is hoped that *SLOP* will be able to explain future and past projects and not just the Kosovo and East Timor cases of peacebuilding via TAs.

Subsequently, in the next section an attempt is made to move away from a macro-oriented analysis of TAs to an interplay between micro, meso and macro levels of analysis. In other words, the interplay between local, national and international factors is analysed. This is done by starting off with a clarification of the precise object of analysis, i.e. by formulating the research question.

¹⁴² George and Bennett (2004: 6) state that process-tracing traces the links between possible causes and observed outcomes.

4.4 Research question

This study analyses the question of *whether the peacebuilding efforts in failed states via United Nations transitional administrations are successful in achieving their end goal of handing over power to the local population, e.g. in creating local ownership*. The research question posed forms part of the bigger research puzzle as to why in some cases UN TAs are able to leave a particular territory and hand over power to the local population and in other cases they are unable to. The study suggests that local ownership is the key to answering the research puzzle.

Bearing in mind that the idea behind the establishment of any transitional governance is that it is governance of a transitional nature and sooner or later the TA will have to hand over power to the local population, and being cognizant of the fact that UN TAs are designed as *ad hoc* missions to act as quick impact projects, it is stated that the ability of a TA to hand over power to the local population of a state/region and leave its territory is deemed as success. In contrast, its inability to leave a particular state/territory is deemed as failure. Based on the conducted comparison between UNMIK and UNTAET, this study argues that the inability of a particular TA to leave a territory is a result of lacking local ownership.

Thus, this study suggests a staged dependent variable of success of a TA. On the one hand, it is suggested that a TA is successful when it is able to hand over power to the local population and leave a territory (a directly observable phenomenon) and on the other hand, the study presupposes that a TA is successful when it has managed to achieve local ownership (not a directly observable phenomenon). The ability of a TA to achieve local ownership (stage I of success) is seen as a prerequisite for its ability to hand over power to the local population and leave a territory (stage II of success). The staged dependent variable towards the measurement of success of a TA is based on a reversal of Jeong's statement that one cannot have positive peace without negative peace. In other words, this study claims that one cannot have negative peace without positive peace. The ability of a TA to hand over power to the local population and leave a territory signifies a minimalist approach to success (similar to negative peace). However, this study suggests that simply handing over power to the local population of a territory and leaving (in terms of an exit strategy) is not sufficient to achieve a

successful TA. Lasting peace and sustainable self-governance¹⁴³, e.g. peaceful and well-functioning states can only be promoted by achieving local ownership. Thus, local ownership and a maximalist undertaking to peace and governance are needed to ensure that an exit strategy on behalf of the international community will not fall apart.

Consequently, when measuring the success of a particular TA it is not enough to consider whether the mission has simply left the territory (minimalism) and an exit strategy is present, rather it is important to analyse whether local ownership has been achieved (maximalism). Thus, local ownership is deemed not only as a prerequisite for the handing over of power of a TA to the local population (achievement of an exit strategy), but also as a safeguard that the peace created will be long-lasting and there will not be a recurrence of violence (a dimension corresponding to positive peace). Since leaving a particular territory due to a handover of power to the local population can be directly observed, attention of this study is turned towards the measurement of local ownership, which cannot be directly observed, but can be inferred from the interplay between macro, meso and micro factors.

The inclusion of local ownership in the measurement of success of a TA presupposes two aims: firstly, it is an attempt to bridge the existing apolitical/political debates on peacebuilding, by suggesting that local participation in the institutions created is necessary if they are to have any hope of lasting and secondly, local ownership is understood as implying both liberal and democratic ownership.

The liberal dimension to local ownership suggests that it is not enough to have self-determination and local participation in the peacebuilding process to evidence local ownership, one needs to have guarantees or safeguards that a return to violence will not occur. Thus, if democratic local ownership signifies local participation of all stakeholders in the peacebuilding process, liberal local ownership implies the achievement of the stipulated benchmarks by the international community. Whereas the presence of local participation and benchmarks achieved are deemed to enhance the level of total local ownership achieved, the presence of conflicting ethnic interests, on the other hand, is deemed as detrimental to the level of local ownership

Due to the existence of conflict entrepreneurs and spoilers in the peacebuilding process, this study stipulates that it is not enough to have local participation in order to ensure successful peacebuilding, liberal local ownership is required to ensure that the

¹⁴³ Note that these two objectives have been present in all mandates of UN TAs since the end of the Cold War.

rule of law will settle conflicting interests between parties and parties are devoid from establishing authoritarian self-government and self-rule. By introducing two dimensions to local ownership, this study rejects both extremes of the apolitical/political debate to peacebuilding. Mere technocratic engineering is rejected for it undermines the liberal side to the political process, on the other hand, pure liberal self-determination is also rejected, for it would signify that a society is well capable of solving all its problems from within, which could, however also imply that a society pursues strategies such as ethnic cleansing in order to 'solve' its problems. Thus, a median way between purely liberal and purely democratic peacebuilding endeavours has been identified.

In other words, this study suggests that peacebuilding requires the synchronization of both the political and the apolitical dimensions attached to it, if the peace, the state and the institutions being built are to have a hope of lasting, that is both the state and society *per se* need to be liberal and democratic, and not just the state institutions or just the society. The existing debates within the literature of peacebuilding have formulated the distinction between state and society in exclusionist terms – focusing either on society and the practice of popular sovereignty or stressing the rule of law and institution-building. This study argues that the question of where peacebuilding begins (in the state or society) is not so important, it is more important to ensure that segments of the state and society are not lost during peacebuilding. Consequently, the field of peacebuilding via TAs should not be treated as a zero-sum game (either/or, institutionalization/liberalization), instead this study argues that one can have 'institutionalization with liberalization' and it is in these instances that the space for local ownership witnesses greater participation and cooperation from the local population instead of disillusionment and a recurrence of violence.

4.5 Propositions

In attempting to answer the research question as to whether TAs are successful in achieving local ownership, and based on an inductive comparison between the United Nations Interim Administration Mission in Kosovo (UNMIK 1999-) and the United Nations Transitional Administration in East Timor (UNTAET 1999-2002), whereby

UNMIK is analysed until August 2008, three propositions have been formulated with regard to the success of TAs (object of analysis).

Firstly, the study states that a TA is likely to be more successful when conflicting ethnic interests are low. Under conflicting ethnic interests are understood interests that are incommensurable and that centre around political goals. The focus on conflicting interests of an ethnic nature is important to this study. Ethnicities are deemed to be subgroups that are most likely to influence the formation of a nation or its dissolution and, therefore, are deemed to impact upon the state being built and the peace promoted. The comparative analysis between UNMIK and UNTAET has also demonstrated that, in Kosovo, the role of conflicting ethnic interests in the process of peacebuilding has been paramount. Additionally, the current literature has seldom¹⁴⁴ focused on the ethnic dimension of post-conflict peacebuilding as undertaken by TAs and the problems that transitional authorities are likely to encounter, a gap that this present study attempts to fill. On an empirical-analytical level of analysis conflicting ethnic interests often take the form of a zero-sum game that can be harmful to peacebuilding, therefore it is important for the TA to produce motivations and benefits for the potentially disruptive elements within society that will outweigh the gains of conflict. On a normative level it is important for the TA to seek to redress and deconstruct conflicting ethnic interests by employing such measures as reconciliation and combating impunity for crimes against humanity. Interestingly, in East Timor there was an East Timorese Commission for Reception, Truth and Reconciliation, whereas in Kosovo despite the mass exodus of refugees instigated by ethnic killings, up till now there has been no Truth and Reconciliation Commission set up.

Secondly, the study states that a TA is likely to be more successful in terms of achieving local ownership, when local participation is high (denoting the participation of all stakeholders in the peacebuilding process, initiated by the TA). This proposition defends the idea that a state cannot be successfully constructed only from outside, peacebuilding needs to take place at grassroots' levels as well. Good governance cannot be successfully taught, it needs to be experienced and adopted by the local population. Local participation not only legitimizes the peacebuilding process (by involving all the relevant stakeholders), but it also leads to greater compliance and better problem-solving. This proposition draws on Börzel & Risse (quoted in Göbel

¹⁴⁴ With some exceptions, e.g. Doyle & Sambanis (2006), King & Mason (2006).

forthcoming) who refer to three arguments as to why increased inclusiveness in an institution (referring to membership and control of at least two stakeholders from states, international organizations, civil society and business actors) will also lead to an increased effectiveness of the institution: 1) due to the dependency of the stakeholders; 2) due to the fact that inclusion of target rules in rule-making and implementation leads to greater compliance and 3) due to the deliberative democracy idea which claims that stakeholder involvement leads to input legitimacy and better problem-solving. Although Börzel & Risse's argument refers to the inclusiveness/effectiveness dichotomy of governance beyond the state, the gist of the argument is deemed to be applicable to the local participation dimension of a TA on an empirical-analytical level of analysis as well.

On a normative level of analysis, local participation is responsible for the inclusion of all segments of society and the practice of their right to self-determination, thus rendering the peacebuilding exercise a political activity, which is acquainted with and is constitutive of local needs and demands, enhancing the legitimacy of peacebuilding, referring to the input-side of legitimacy - 'government by the people'¹⁴⁵. Thus, local participation is deemed to be responsible for the democratic dimension of local ownership. The higher local participation is, the more democratic local ownership will be.

Thirdly, the proposition is being put forward that a TA is likely to be more successful, when more benchmarks are achieved. The benchmarks achieved refer to the importance of the clarity of the mandate¹⁴⁶. The benchmarks achieved (as stipulated by the international community) are a safeguard against the inclusion of spoilers in the peacebuilding process by assuring that the rule of law will prevail and construct a liberal state and society. Thus, on an empirical-analytical level benchmarks achieved counter spoilers and illiberal elements of society, on a normative level of analysis benchmarks achieved counter the possibility that self-determination through local participation assumes authoritarian forms. In other words, this proposition is required to counterbalance the local participation of society and inhibit the total and unguided self-determination of society, for it is argued that a merely political process of self-determination is not enough to prevent a recurrence to violence. Guarantees and guidance are needed to balance the popular will with the human rights of the

¹⁴⁵ In Göbel (forthcoming) and Rittbegger, Huckel et al. (2008).

¹⁴⁶ A point also emphasized by Doyle and Sambanis (2006), Chesterman (2004) and Clapham (2005).

individual. Thus, benchmarks achieved are the liberal dimension of local ownership. Moreover, in ethnically divided societies the liberal state is the one that is supposed to stand above the ethnic divisions in a country (Kymlicka 2007: 33).

The higher the local participation in a peacebuilding process, the higher the level of democratic local ownership will be. The higher the number of benchmarks achieved as stipulated by the UN mandate or constitutional document (in Kosovo's case one is referring to the *Standards for Kosovo*), then the higher the level of liberal local ownership will be. Conflicting ethnic interests, on the other hand, are deemed as impacting negatively on both the success of a TA in terms of being able to achieve local ownership, as well as on the levels of local participation and amounts of benchmarks achieved. Thus, conflicting ethnic interests are envisaged as constituting the independent variable of the study, whilst local participation and benchmarks achieved as two intervening variables that have an impact on local ownership. In other words, this study suggests that when conflicting ethnic interests are high (such as in Kosovo), the level of local participation is low and the amount of benchmarks achieved is also low, impacting negatively on the ability of a TA to achieve local ownership. Apart from suggesting a horizontal linear causation between the research variables identified, this study also proposes a spatial model that best illustrates the complexity and dynamics of current peacebuilding. This model has been named the *Space for Local Ownership (SLOP)* model and it represents the first stage of success of a TA in terms of its ability to achieve local ownership. A higher *SLOP*, however, also suggests a more successful TA in terms of its ability to hand over power to the local population and leave a particular territory (stage II of success).

4.5.1 The Space for Local Ownership of Peacebuilding (*SLOP*) model

The *Space for Local Ownership of Peacebuilding (SLOP)* model has been constructed, drawing on Doyle & Sambanis' (2006) peacebuilding triangle, which deals with the issue of civil war in a rationalist framework of analysis. However, even though Doyle & Sambanis' triangle suggests a space for 'participatory peace', the authors do not analyse local participation as a variable. Instead, the 'local capacities' dimension that is suggested refers to the levels of economic development of a country and its resources, but not actual participation in the political process, as already pointed out in chapter one of the study. Thus, although Doyle & Sambanis' peacebuilding triangle

might have explanatory power with regard to economic and developmental factors on a local level, it virtually offers no explanation on behalf of the political process and local participation therein, a shortcoming that the present study addresses.

The triangle constructed by this study demonstrates how successful a TA has been in terms of achieving local ownership by proposing the concept of ‘space’ for the measurement of local ownership achieved. Thus, *SLOP* proposes that peacebuilding via TAs assumes a life of its own, its own dynamics. Similar to Barnett & Finnemore’s (2004) analysis of international organizations and their depiction not merely as black boxes, *SLOP* suggests uncovering the black box of the peacebuilding process. According to the proposed spatial model, local ownership is measured in terms of the space created for it due to the interplay between conflicting ethnic interests, local participation and benchmarks achieved. The space for local ownership will be higher when: 1) conflicting ethnic interests are low, 2) local participation in the peacebuilding process is high and 3) more benchmarks are achieved. Consequently, the *Space for Local Ownership of Peacebuilding (SLOP)* balances the macro dimension of peacebuilding via TAs (in terms of benchmarks set by the international community) with the meso- and micro dimensions of peacebuilding (in terms of local participation and conflicting ethnic interests). Thus, *SLOP* incorporates both ‘government by the people’ and ‘government for the people’ and is deemed to make the entire process of peacebuilding more legitimate, balancing the input legitimacy of an institution (related to compliance and participation), with the output legitimacy of an institution (related to problem-solving capacities and institutional effectiveness)¹⁴⁷.

Thus, *SLOP* illustrates the outcome of the peacebuilding process as undertaken by a TA and determines the ability of a TA to hand over power to the local population and leave a territory. In other words, *SLOP* reflects stage I of TA success and determines stage II of TA success.

The *Space for Local Ownership of Peacebuilding* is illustrated in Figure one.

¹⁴⁷ In Göbel (forthcoming) and Rittberger, Huckel et al., (2008).

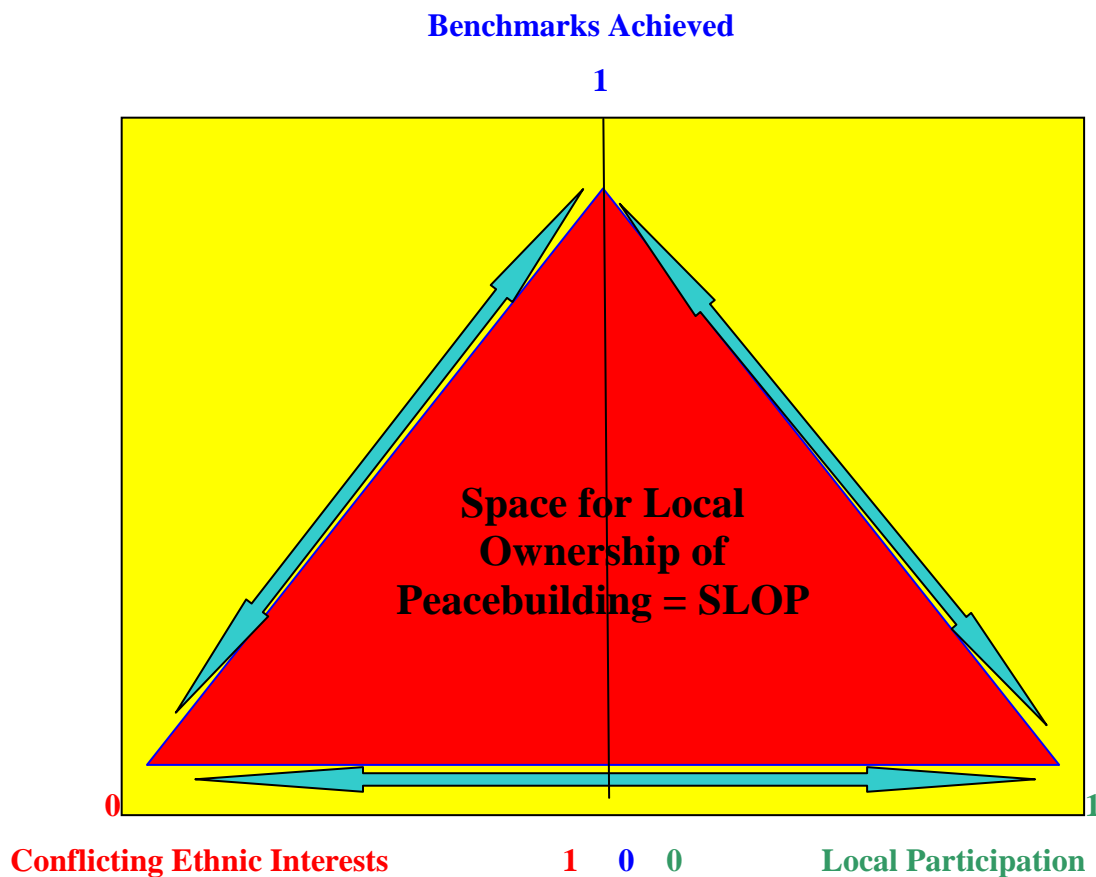


Figure 1: *The Space for Local Ownership of Peacebuilding*, author: D.C.S.

Figure one refers to the outcome of the peacebuilding process and combines a vertical (constructivist) with a horizontal (rationalist) reading to the process of peacebuilding. A horizontal reading of *SLOP* depicts the linear causation identified in UNMIK and lack thereof in UNTAET, namely that high conflicting ethnic interests lead to lower local participation and fewer benchmarks achieved, thus, forging a lower level of local ownership. A vertical reading of *SLOP* suggests that all variables identified mutually constitute¹⁴⁸ and impact upon each other in peacebuilding. Thus, a vertical reading proposes that in addition to the horizontal causation identified, vertically all three variables mutually impact upon each other. Lower participation in Kosovo has led to the unfulfilling of all benchmarks stipulated, especially of those referring to the ethnic minority quotas employment in the public service sector. On the other hand, the lack of

¹⁴⁸ Refer to Fearon and Wendt (2002) for further elaboration on the difference between causation and constitution.

clarity of mandate (as in the Kosovo case) and the unclear setting of objectives, coupled with too ambitious benchmarks have led to frustration in Kosovo, resulting not only in distrust in the local institutions for self-government and thus, lower participation, but also to increased ethnic violence (as witnessed by the 2004 March violence in Kosovo). Due to the fact that in East Timor conflicting ethnic interests have been low (despite having a more ethnically heterogeneous society than Kosovo) and the mandate of UNTAET has been clear with foreseeable objectives, the institutions created for self-governance have been much more inclusive with high levels of local participation and a quicker ability of UNTAET to hand over power to the local population. Thus, in terms of the research puzzle referring to why in some cases peacebuilding/ peacekeeping missions never seem to end, and in other cases quick and successful transfers of power to the local population are possible, *SLOP* seems to provide an answer. *SLOP* draws on the empirical evidence from the Kosovo and East Timor settings.

The interplay between conflicting ethnic interests, local participation and benchmarks achieved in the peacebuilding process can be illustrated by *SLOP*. Whereas Figure one illustrates the outcome of peacebuilding via TAs, combining a vertical and a horizontal reading to it, Figure two depicts the horizontal reading to the peacebuilding process itself. The peacebuilding process via UN TAs is illustrated in Figure two.

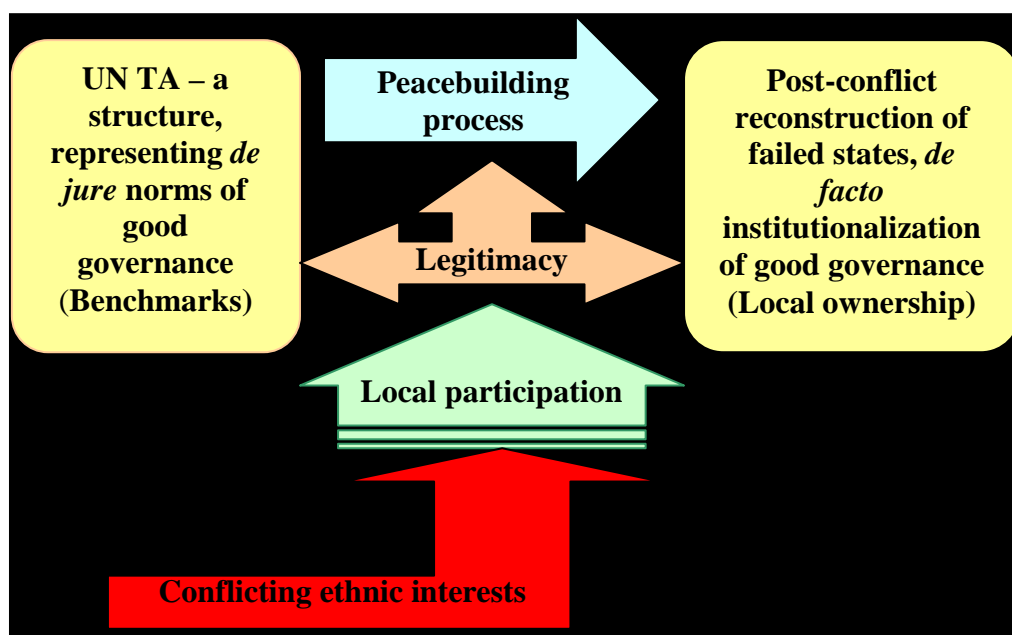


Figure 2: *The Peacebuilding Process via TAs*, author: D.C.S.

Figure two unpacks the black box of peacebuilding by demonstrating how peacebuilding works. Thus, Figure two reveals the causal mechanism uncovered in Kosovo and East Timor and suggests that high conflicting ethnic interests lead to lower local participation and fewer benchmarks achieved, impacting negatively on the legitimacy of peacebuilding and the commitment to and exercise of liberal self-government (local ownership). Figure two illustrates the separation of the three levels of analysis: macro, meso and micro and indicates that the creation of local ownership is dependent on the inclusion of all three levels of analysis, if the peacebuilding is to be legitimate and successful. In other words, the diagram represented in Figure two unveils the causal process of achieving local ownership and the hindering effect of conflicting ethnic interests within this process.

Figure one, in contrast, unveils the working of both the horizontal reading of peacebuilding and the vertical reading of peacebuilding, which relies on the mutual constitution of the research variables, the outcome of the synchronization of these two approaches being the *Space for Local Ownership of Peacebuilding*. Thus, *SLOP* is a model that views rationalism and constructivism not as exclusive approaches to the understanding of International Relations, but as mutually complementary¹⁴⁹. However, this complementarity has seldom been stressed in the peacebuilding literature. By combining a horizontal (rationalist) and a vertical (constructivist) reading into one model (*SLOP*) this study hopes to enrich not only the explanatory power of the model, but the entire peacebuilding literature as well.

Figure two represents the horizontal reading to Figure one and the proposed model *SLOP* offers a synchronization of constructivist and rationalist accounts of peacebuilding, as well as a synchronization of the apolitical/ political debates in peacebuilding. This synchronization is in stark contrast to the bulk of the peacebuilding literature, which has focused on a rationalist and empirical-analytical argumentation when discussing TAs. For example, Doyle & Sambanis (2006) have preferred rationalism as opposed to mainstream International Relations theories such as neo-realism or neo-liberalism when constructing their peacebuilding triangle and

¹⁴⁹ A point also defended by Finnemore (1996), who claims that actors create structures that take a life of their own and structures create actors who may overturn structures for reasons of their own, emphasizing their mutual constitution. Fearon and Wendt (2002) also state that identities and institutions are mutually constitutive.

dwelling upon the factors that lead to positive peace in a society¹⁵⁰. Thus, Doyle & Sambanis (2006: 56) suggest that the costs and benefits of cooperation can be changed by a legitimate UN mandate which induces cooperation, and preferences can be transformed turning the cooperation problem into a coordination one; in this sense reconciliation is a 'label' for these changed preferences. If spoilers are present, then the peacekeeping is likely to succeed if there is peace enforcement targeted at the spoilers and preventing them from undermining the negotiation.

However, few have been the studies referring to the norms of TAs with a positivist ontology (resting on causality). The majority of studies have neglected the normative dimension underlying TAs, namely that they are structures, representing norms of good governance that need to be *de facto* adopted and socialized into local ownership. In other words, the macro, meso and micro levels of analysis can be treated as norms that at times contradict, as is the case between the universal norms of good governance entrenched in a TA mandate and its benchmarks, and the norms of governance observed as being promoted by the local population in terms of participation and particular ethnic interests. Thus, on a constructivist plain of analysis, the success of a TA in terms of achieving local ownership refers to its ability to deconstruct and reconstruct conflicting (ethnic) interests, i.e. the ability of a TA to forge a nascent collective identity that impacts positively on the involvement of all stakeholders in the peacebuilding process and the transformation of *de jure* norms of good governance into *de facto* institutionalization of good governance. On the other hand, the persistence of conflicting ethnic interests impacts negatively on the legitimacy of the peacebuilding via TAs and the achievement of local ownership since it leads to an overthrow of the proposed norms of good governance and a refusal to participate in the peacebuilding process and institutions.

¹⁵⁰ For Doyle & Sambanis (2006: 40-1) 'neorealism cannot explain why ethnic, religious or class-based divisions occur and why they may be important causes of civil war' since it assumes that states are unitary actors, whereby structural changes in the international system cause state behaviour to change, neoliberalism, on the other hand, is better suited to explain civil war since it takes into consideration the domestic sphere and non-state actors (ethnic networks, etc), however, it cannot explain domestic institutional change or the use of force in ethnic antagonisms. Thus, 'the usefulness of mainstream International Relations theory in analyzing civil war or peacebuilding after civil war is limited' (Doyle & Sambanis 2006: 41) for the authors stress that the macrosystemic dimensions such as the end of the Cold War are less important than the regional dimensions of these wars. Therefore, Doyle & Sambanis (2006: 43, 46-7) embrace rationalist explanations where one can observe peace failure if the expected utility of a new war is greater than the expected utility of peace. This study agrees with Doyle & Sambanis' observation with regard to the limited usefulness of mainstream International Relations theory in analyzing peacebuilding.

On a theoretical level *SLOP* attempts to synchronize existing theories on two occasions. Firstly, the model is a reaction to the theories put forward by Paris (2004) and Chesterman (2004, 2007) that local ownership need be only an end goal and not the means to successful peacebuilding. Rather, *SLOP* builds on Reich's (2006) suggestion for a more equal partnership between 'outsiders' and 'insiders' in international peacebuilding¹⁵¹, on Zaum's (2007: 27) 'sovereignty paradox' and agrees with Chandler's (2006: 48) suggestion that one cannot achieve democracy and capacity for self-government without being involved in the political process of constructing it. *SLOP* builds on the suggestions that local participation and local dynamics are important when discussing peacebuilding. *SLOP* also builds on the movement within the literature for inclusive and effective institutions¹⁵² and in doing so synchronizes the apolitical/political debate in peacebuilding. Secondly, the model incorporates a rationalist and a constructivist interpretation of the peacebuilding via TAs process by offering two readings to it: a horizontal (rationalist) one and a vertical (constructivist) one. This model attempts to prove that rationalism and constructivism need not necessarily be exclusionary approaches to International Relations, but can, indeed, be complementary to each other and thus, provide a better understanding of the phenomenon of peacebuilding.

Thus, this study illustrates that the constructed *SLOP*, stemming from an interaction between macro, meso and micro levels of analysis can be analysed both from a rationalist and a constructivist line of argumentation, i.e. from a 'logic of consequences' and a 'logic of appropriateness'. The analysis of *SLOP* and the workings of the peacebuilding process from a vantage point of two distinct theoretical approaches to International Relations is a novel undertaking in the peacebuilding literature. In the following section, attention will be dedicated to the two theoretical frameworks of analysis and the different interpretations accorded to the research variables in a horizontal (rationalist) and a vertical (constructivist) dissection of *SLOP*.

¹⁵¹ To this point Baker & Ausink (1996: 29) argue that the point of reconstructing failed states is to be able to show people how to help themselves and thus, the question of ownership becomes paramount if constructed structures are not supposed to unravel once the international forces leave.

¹⁵² Described in chapter two of the study.

4.6 Theoretical framework

Since this study forms part of International Relations, it is important to take a look at the historical development and existence of theories in the field of study. The history and development of International Relations has been depicted around the development of the Great Debates within the discipline. According to Schmidt (2002: 11-15) the first such great debate occurred between the two World Wars and was one between realists and idealists, the second debate occurred after World War II and the presupposed victory of realism over idealism and the third debate was an inter-paradigm debate between realists, pluralists and structuralists with a growing focus on complex interdependence and dependency. Simultaneously, in the 1980s another ‘third debate’ developed heralding a post-positivist era of critical theory, feminism and post-structuralism, whereby one can identify a plurality of ‘third debates’ (between neorealism and neoliberalism, between rationalists and reflectivists, between rationalists and constructivists, between offensive and defensive realists, between communitarians and cosmopolitans). For Schmidt (2002) rationalism represents the current orthodoxy of International Relations.

Although this study acknowledges that the communitarian-cosmopolitan debate is applicable to TAs and peacebuilding, this tension has already been explored by scholars dwelling upon the sources of sovereignty (Paris 2004, Chandler 2006, Cunliffe 2007) and the institution of sovereignty (Jackson¹⁵³ 2005, Knudsen 2006, Zaum 2007). The tension between the universal/individual and the particular/communitarian has also been pertinent to the English School, which as a stream of International Relations has proven that developments, reflecting upon the ‘good life’ of the citizens can be a concern of international theory (Little 1999: 9).

However, the working of a TA in terms of a process of interaction of different norms of good governance and the process whereby such norms are being transposed into *de facto* government has seldom been analysed from a normative vantage point. In fact, the working of a TA has seldom been unpacked out of the black box – there have been few accounts as to how exactly the transfer of power from the international to the national community has been taking place, what has been the process of inclusion of

¹⁵³ Jackson (2005: 129) has argued that the conflict between pluralist norms of state sovereignty and solidarist norms of human rights is a normative conflict that has been built into the international system for the past 350 years.

local actors through participation, how have spoilers impacted upon the transfer of power from internationals to nationals. As already stated, the majority of studies have been following either a strategy of *IBL*, whereby the local dimension has been neglected or have stressed the importance merely of the local dimension (Cunliffe, Bickerton). Jackson and Kreijen's accounts of sovereignty have been important towards grasping the debate between universal and particular norms that underlie UN TAs, trusteeship arrangements, humanitarian intervention, but they have not revealed what the working of such an endeavour is.

In essence, most of the studies have remained concerned with the practice of the institution of sovereignty (Zaum 2007) and have thus remained preoccupied with the structure of TAs and peacebuilding, rather than the process of peacebuilding itself. In other words, there have been a lot of static descriptions of peacebuilding, but few models to explain the underlying dynamics of peacebuilding.

By undertaking an empirical study of Kosovo and East Timor's experiences of UN TAs and peacebuilding, this study has process-traced the workings of the UN TAs with specific reference to the transfer of power from the international actors to the national and local ones. There have been two identified logics that such actors can follow – a 'logic of consequences' or 'logic of appropriateness', the former corresponding to rationalism and the latter to social constructivism.

4.6.1 Rationalism vis-à-vis constructivism

March & Olsen (1998: 949) refer to two logics of action by means of which human behaviour is interpreted: on the one side is the logic of anticipated consequences¹⁵⁴ and preferences and on the other side the logic of appropriateness¹⁵⁵ and the sense of identity. A normative interpretation would try to establish whether one logic leads to a better society than the other; whereas a descriptive study would address the question whether one logic is more likely to be observed as the basis of actual behaviour (March & Olsen 1998: 949). This study is more interested in the normative interpretation of the two logics of action, in other words, it is concerned with whether a 'logic of consequences' or a 'logic of appropriateness' leads to a more successful TA.

¹⁵⁴ According to the logic of anticipated consequences, society is constituted by individuals for the fulfilment of individual ends, thus individual actions are explained by identifying consequential reasons for them (March & Olsen 1998: 950).

¹⁵⁵ March & Olsen (1998: 951-2) describe the logic of appropriateness, where 'identities and rules are constitutive as well as regulative and are moulded by social interaction and experience'.

However, underlying such a normative interpretation is the descriptive question of which type of logic is more likely observed as a basis of actual behaviour in Kosovo and East Timor.

Rationalism and constructivism are viewed as metatheoretical tools of International Relations rather than distinct theories, the former assuming an individualist ontology, whereby wholes are reducible to 'interacting parts'¹⁵⁶ and the latter assuming a holist ontology, whereby 'parts exist only in reaction to wholes'¹⁵⁷ (Fearon & Wendt 2002: 53).

Fearon and Wendt (2002: 54) list the five classical conceptions of the debate between rationalism and constructivism: 1) material versus ideational, 2) logic of consequences versus logic of appropriateness, 3) norms as useful versus norms as right, 4) exogenous versus endogenous actors, when understood in causal terms, 5) exogenous versus endogenous actors, when understood in constitutive terms.

Fearon & Wendt (2002: 60) distinguish between rationalism and constructivism on the basis of *homo economicus* vs. *homo sociologicus* – the former is a calculating machine, which chooses the best means to achieve the desired ends, whereas the latter is a rule-follower who acts out of habit and decides what to do by posing the question 'how is a person in my role (or with my identity) supposed to act in this circumstance?' Rationalists argue that actors follow norms because it is useful, whereas constructivists argue that they follow norms because they actually believe this is the right and legitimate thing to do (Fearon and Wendt 2002: 61).

Rationalists often presume that macro-level phenomena (Balance of Power system) can be explained by focusing on micro-level phenomena (motivation, capacities), whereas constructivists are uncertain about the understanding capacity of particular parts in trying to explain the whole of social life (Fearon & Wendt 2002: 65). On the other hand, most constructivists argue that institutions and actors' identities are mutually constitutive, meaning that 'international institutions can alter the identities and interests of states as a result of their interactions over time within the auspices of a set of rules (Simmons & Martin 2002: 198). The ability of institutions to

¹⁵⁶ Rationalist analyses begin from the micro level and work up to the macro level, similar to the way that Schelling's micromotives lead to macrobehaviour (Fearon & Wendt 2002: 56).

¹⁵⁷ Wendt (1999: 139) quotes Hollis and Smith and distinguishes between two ways of story-telling pertinent to rationalism and constructivism: an outsider's one told in the manner of a natural scientist and an insider's story which reveals what events mean.

alter actors' identities is an optimistic sign for the deconstruction and reconstruction of conflicting ethnic interests in Kosovo and the ability to achieve great success.

Krasner (1999: 5) claims that the 'logic of consequences' sees political action and outcomes, including institutions, as the product of rational calculating behaviour designed to maximize a given set of unexplained preferences. The 'logic of appropriateness' understands political action as a product of rules, roles and identities that stipulate appropriate behaviour in given situations. For Krasner (1999: 6) the international system represents an environment where the 'logic of consequences' dominates the 'logic of appropriateness'¹⁵⁸.

The mere fact that one can make normative judgements about the development of sovereignty and analyse it from a value-based position pertains to constructivism¹⁵⁹, as Kratochwil (1995: 21) observes 'sovereignty is an institution that allows us to characterize and appraise our observations in terms of certain normative criteria'. This point has been reiterated by Boekle, Rittberger & Wagner (1999: 2) who claim that 'constructivism assumes a logic of appropriateness', whereby actors' preferences, identities and behaviour are being shaped and prescribed by norms. Thus, for constructivists identities are shaped by norms. For rationalists identities are 'consequential for the definition of actor interests' and are, thus, shaped by interests (Katzenstein 1996: 22).

For Finnemore (1996a: 30) in reality both logics are connected: actors create structures that take a life of their own and structures create and empower actors who may act to overturn structures for reasons of their own. Finnemore (1996a: 47) views rational theories as demand-driven, whereas constructivist theories as supply-driven. Herrmann (2002: 129) argues along these lines by linking interests and norms, claiming that constructivists see interests as being shaped by norms and as such need not be opposed to one another. On the other hand, however, it can also be said that interests are shaped by different norms, in which case it might be possible to identify interests and norms as independent factors.

¹⁵⁸ Krasner (1999: 25) states 'The international system is complex. The logic of consequences can trump the logic of appropriateness. Westphalian and international legal sovereignty... are examples of organized hypocrisy'.

¹⁵⁹ Following Guzzini and Adler (quoted in Pouliot 2007: 361) constructivism is based on three tenets: an epistemological claim – knowledge is socially constructed, an ontological claim – social reality is socially constructed, and a reflexive claim – knowledge and reality are mutually constitutive.

Thus, the theoretical framework undertaken towards the analysis of *SLOP* can have two different backgrounds – a rationalist one or a constructivist one.

4.6.2 ‘Logic of appropriateness’ and ‘logic of consequences’ in *SLOP*

Most analyses of local ownership up till now have undertaken a rationalist or functionalist scheme. Few have concentrated on the insider-outsider dilemma, pertinent to social constructivism and have tried to incorporate insiders in the peace-building process by mutual dialogue and understanding.

This whole debate pertaining to the concept of local ownership and how much local is good for the achievement of sustainable peace is nothing new in the field of International Relations and Political Science. The discussion of whether one should promote the notion of a good life and good governance and democracy somewhere else and to what extent external involvement should be allowed has been the crux of constructivist sociological theory, emphasizing the important role of local identities and perceptions when intervening somewhere else. The inclusion of the ownership idea in the peacebuilding literature, however, is new due to the fact that initially the local dimension of successful peacebuilding was rejected. Up until mid-2000 local ownership was deemed as the end goal and not the means to successful peace-building (Paris 2004 and Chesterman 2007).

As previously mentioned there are two readings applicable to *SLOP*. The horizontal reading treats all research variables as exogenously constructed. According to such a ‘logic of consequences’ the aim of peacebuilding via TAs is to maximize gains from peace in order to avoid a relapse into war. In this case conflicting ethnic interests are taken as instrumental with little chance for deconstruction. According to such a scheme *SLOP* is dependent on the actors’ willingness to negotiate and bargain and achieve benchmarks for they are deemed to be ‘useful’.

On the other hand, *SLOP* from the point of view of a ‘logic of appropriateness’ emphasizes the mutual construction and constitution of all research variables. According to such an approach there is a chance for conflicting ethnic interests, viewed as identities shaped by norms, to be reshaped and remoulded into cooperative ones and there is a chance for the benchmarks to be adjusted to the particular peacebuilding context in order to achieve long-lasting peace. Both logics of analysis have been witnessed in the case studies of Kosovo and East Timor.

4.7 Methodology

Since this study investigates the governance and participation structures of transitional administrations and the comparative method has been predominantly used to study and compare representative governments, then the two cases of UNMIK and UNTAET seem to fit in well with a classical example of comparative politics. Eckstein (1963: 97) has noted ‘among the many subjects dealt with in comparative politics, pride and place must go, if only for reasons of past emphasis, to the study of representative, constitutional governments’.

The current study is a theory-proposing¹⁶⁰ and literature-assessing one since the propositions made and the constructed model of *SLOP* are based on an inductive¹⁶¹ comparison between the two cases of UN TAs in Kosovo and East Timor, simultaneously drawing on existing shortcomings in the peacebuilding literature. The method used to establish *SLOP* has been that of controlled comparison.

Controlled comparison has been used to infer the propositions made and the model constructed by using Mill’s method of difference, whereby two cases with similar characteristics have been selected, that possess different values on the study variable (success of the TA), looking for other differences between the cases that can be nominated as possible causes of the study variable (van Evera 1997: 68-9). Van Evera (1997: 69) has noted that the more similar the cases are, the easier it is to spot the candidate causes and the fewer the number thereof.

Since the aim of this study has been to answer the research question as to whether UN TAs succeed in achieving local ownership in the state in question, it has not been sufficient to merely identify the causes of success of a TA, the causes that lead to local ownership, based on a cross-case controlled comparison. Attention has been devoted also to explaining why that has been the case – why has UNTAET been able to hand over power to the local population soon after its establishment and UNMIK has been hesitant to do so. The ‘why’ part of the research question has also formed the underlying research puzzle – why do some peacekeeping missions (with specific reference to peacebuilding missions in this study) manage to leave the territory

¹⁶⁰ A theory is defined as a set of ‘connected causal laws or hypotheses’ (van Evera 1997: 12), whereas for Waltz (quoted in van Evera 1997: 12) a theory refers to the statements that explain causal laws. This study proposes causal laws that draw from the comparison of the Kosovo and East Timor experiences in peacebuilding.

¹⁶¹ Due to the fact that the study is inductive, the existence of null hypotheses has been discarded.

in question, whereas others never seem to end. In order to unravel the research puzzle, process-tracing has been undertaken in each case study to trace backwards the causal processes that produce the case outcome, thus seeking to explain the entire causal process (Van Evera 1997: 70). Thus, if controlled comparison has been employed to draw differences between the two cases of Kosovo and East Timor, process-tracing has been applied within each case in order to explain the intricacies of the peacebuilding process.

The executed controlled comparison and process-tracing have relied primarily on the data-rich *Reports of the Secretary-General* on both UNMIK and UNTAET, as well as national government documents, international non-governmental and civil society organization reports and documents. The majority of the statistics employed stem from UN documents and surveys. Secondary sources are employed primarily with regard to the theoretical analysis.

The time-frame within which the comparison is undertaken varies since UNTAET is examined from 1999-2002, when it ended successfully after East Timor achieved independence and was renamed to the Republic of Timor-Leste, whereas due to the fact that in Kosovo UNMIK continues to be present, the time-frame of analysis has been much longer - from 1999 to August 2008. In the next sub-section the concrete reasons underlying the cases study selection of Kosovo and East Timor are illustrated.

4.7.1 Case study selection

The two cases of Kosovo (UNMIK) and East Timor (UNTAET) have been selected because of the large amount of similar background conditions and the extreme differences in the study variable (the success of a TA).

In the peace-building literature¹⁶² Kosovo is often referred to as a failure, whilst East Timor as a success (following the achievement of independence on 20 May 2002 and the renaming of East Timor to the Republic of Timor-Leste). More importantly, unlike Kosovo's case, where the international community (UN and EU) is still present, despite a unilateral *Declaration of Independence* on 17 February 2008, in East Timor the transitional administrators departed soon after independence (2002). The differences in local ownership achieved, which allowed UNTAET to depart and prompted UNMIK to continue its operations in Kosovo offer a good ground for

¹⁶² For a detailed analysis see Chesterman (2004), Smith & Dee (2003) and Caplan (2005).

comparison of the dependent variable, based on Mill's 'method of difference' (Van Evera 1997).

As already stated, there have been numerous similarities in the background conditions of the Kosovo and East Timor cases.

Firstly, these two cases are temporally near (both begin in 1999) and represent one of the latest UN- initiatives of peacebuilding with complete takeover of governmental power in a foreign territory on a temporary basis¹⁶³.

Secondly, both territories have had little experience as independent countries. In contrast to Kosovo, which for the most part of the twentieth century had been part of the Republic of Serbia or Yugoslavia with differing degrees of autonomy, East Timor was independent for nine days in 1975 (before its invasion from Indonesia). Thus, when the UN got involved in Kosovo and East Timor, both territories were provinces of other states, striving for independence. Additionally, the territories were colonies for a considerable period of time, East Timor was a Portuguese colony and Kosovo formed part of the Ottoman Empire – experiences that undoubtedly influenced the formation not only of mentality, but also of ethnic identity¹⁶⁴.

Thirdly, unlike the latest UN TAs under the aegis of the Peacebuilding Commission in Sierra Leone and Liberia, Kosovo and East Timor offer a longer time-span of peacebuilding activities that allows for an easier measurement of the success achieved. Due to the longer time-span since the establishment of a TA, both Kosovo

¹⁶³ Note that these are the only two cases of TAs with complete takeover of government powers pre-9/11.

¹⁶⁴ This characteristic has also been observed by Pouyé (2005: 12) who claims that both societies had very little experience in centralized government and both countries retained strong kinship-based structures with elements of a clan-like non-state organization in certain parts of their territory (the author points out that in Kosovo the *kaçak* resistance found greatest support in the rural regions between Western Kosovo and Northern Albania, in a similar fashion as the East Timorese assistance first found its strongest support base in the most isolated and traditional regions of the East, the *Fakiru*). This comes as no surprise since any attempts by the Ottomans, Serbs or Portuguese to levy taxes or recruit army officials had always been met with rebellion on behalf of the local population (Pouyé 2005: 12). For Pouyé (2005) the resistance in both Kosovo and East Timor was not only dependent upon support from the rural areas, but also in both regions a choice for non-violence and national unity predominated the political scene of resistance. In East Timor Xanana Gusmão had insisted on preserving the image of his people as being 'non-violent victims' and this put him at odds with some FALINTIL leaders, a similar situation developed in Kosovo where the passive resistance preached by LDK-leader Ibrahim Rugova hit gradually against a confrontation with the Kosovo Liberation Army (UCK) (Pouyé 2005: 24). For Pouyé (2005: 28) the resistance structures present in Kosovo and East Timor were above-all 'embryos' of states.

and East Timor have been widely discussed in the peacebuilding literature¹⁶⁵, providing for data richness (a criteria emphasized by Van Evera 1997: 77).

Fourthly, both in Kosovo and East Timor there were peace enforcement missions before the establishment of the UN TA: in Kosovo NATO carried out Operation Allied Force in 1999 and in East Timor on 20 September 1999 the International Force for East Timor (INTERFET) was established with 1,500 Australian, British and New Zealand troops (Coleman 2007).

Last, but not least, both Kosovo and East Timor are relatively small territories with a small population¹⁶⁶, which according to Clapham (2005: 26) has alleviated the management of the complex processes of transitional rule for international organizations.

Due to the similar background conditions between Kosovo and East Timor it has been easy to spot the three major differences between UNMIK and UNTAET on an international, national and local level¹⁶⁷: 1) the clarity of UN SCR 1272, establishing East Timor's goals and benchmarks to be met, compared with the vagueness of UN SCR 1244, 2) the rate with which the process of 'Timorization' occurred, compared to the deadlock in Kosovo, and 3) on a local level the conflicting ethnic interests evident in Kosovo. The three identified differences between Kosovo and East Timor are analyzed in the next section.

4.8 Research variables

¹⁶⁵ Studies containing a comparison between Kosovo and East Timor include the works of Hennes (2006), Zaum (2007), Wollenberg (2007), Wilde (2008), Chesterman (2004) and Smyrek (2006).

¹⁶⁶ The total area of East Timor is 96 120 square km. and that of Kosovo is 102 173 square km., in East Timor the population is 924 642 and in Kosovo 2 100 000. The data of East Timor is based on *The 2004 Population and Housing Index in East Timor* and the data on Kosovo stems from 2006 and was released by the *Statistical Office of Kosovo (SOK)*.

¹⁶⁷ The controlled comparison between Kosovo and East Timor has been controlling for several variables that have been pointed out by the peacebuilding literature with regard to influence on the success of a mission: on an international level (UN competence, UN size, budget, mandate specifics), on a national level (national competence and previous experience with democratic governance, political leadership, position of host country, local participation, economic structure, civil society and representativeness) and on a micro level (colonial heritage, conflicting ethnic interests). With regard to the UN size, competence and budget it can be stated that UNMIK has been one of the most expensive missions undertaken ever, with much more personnel and finances than UNTAET. The political leadership in Kosovo (Rugova) and East Timor (Gusmão) has been outstanding and both countries have had a colonial heritage. Using a controlled comparison for other possible factors that influence the success of TAs, this study has come up with the three above-mentioned variables ('causal phenomena', van Evera 1997) on the international, national and local levels of analysis.

This section devotes attention to the measurement of the variables under study: the dependent variable, referring to the success of the TA (in terms of achieving local ownership – stage I of success, and the handing over of power to the local population – stage II of success) and the three major differences that have been identified between East Timor and Kosovo on a local, national and international level, namely the independent variable of conflicting ethnic interests and the intervening variables of local participation and benchmarks achieved, deemed to influence the outcome of the dependent variable (success of TA in terms of achieving local ownership).

4.8.1 Conflicting ethnic interests

A striking difference between Kosovo and East Timor has been the existence and absence of conflicting ethnic interests. Although Kosovo and East Timor are both ethnically heterogeneous societies, the difference between UNMIK and UNTAET has been in the lack of boycotting actions by ethnic groups in East Timor, such as is the case in Kosovo (the Serbs have boycotted numerous local elections, participation in the government has also been low with the foreseen affirmative action quotas for Serbs remaining decisively unoccupied). There have also been no parallel institutions set up in East Timor due to conflicting ethnic interests, a phenomenon decisively present in Kosovo.

This is a striking difference since according to Pouyé (2005: 43) in the early days of international administration – it was Dili and East Timor that were lacking national symbols and identity (such as a flag, the embracing of a local language as an official one to replace Indonesian) and in Kosovo it was completely the opposite – in Pristina there were nationalist symbols all over – all Cyrillic scripts had been destroyed and replaced by the Latin Albanian ones¹⁶⁸. Jaffrelot (quoted in Pouyé 2005: 45) thus, clarifies that nationalism is not the same as national identity and distinguishes between the two by viewing national identity (nationhood) as the slow emergence of a perceived common identity, whereas nationalism is treated as a construct produced by specific actors in order to fulfil a particular agenda. Using Jaffrelot's distinction one can conclude that in East Timor there is a weak national identity present, whereas in

¹⁶⁸ According to Kosovo Albanians in thirty years everyone in Kosovo will call himself 'Kosovar', which points to the main difference between the dialects spoken in Kosovo (Gheg Albanian) and the one spoken in Albania (Tosk Albanian), whereas in East Timor most people questioned insist that being East Timorese corresponds to the respect for human rights (Pouyé 2005: 53-5).

Kosovo there are two types of opposing nationalisms at work (Albanian *versus* Serbian nationalism). The Kosovo case has been further complicated by the co-existence of these two types of opposing nationalisms on the same territory¹⁶⁹, which according to this study has been detrimental to the international attempts to enmesh a collective national identity.

In order to understand what constitutes an ethnic interest and under what conditions such interests become conflicting, one needs to examine the concept of ethnicity. White (2004: 23) claims that the word 'ethnos' has a Greek origin and means 'common descent'. Young (2003: 10) states that ethnicity is defined in different ways, most often in terms of its attributes: mythical kinship, ancestry, language, shared values, common culture, common cultural practices and symbols. A group achieves consciousness not only in terms of what it is, but also in terms of what it is not: the boundary which demarcates 'we' and 'they' is critical in giving social meaning to the collective self. Fearon (2002: 9) stipulates that membership in a prototypical ethnic group is primarily by descent, belonging to the group is important for members and there are distinguishing cultural features shared (common language, religion and customs) that are held to be valuable, the group has a homeland or remembers one, there is a shared collectively represented history and the group can stand alone.

For Connor (1994) ethnicity symbolizes the loyalty to the nation, whereas the nation represents the loyalty to the state, thus the crucial question for Connor has been 'when is a nation' and not 'what is a nation'. Most authors have agreed that ethnonations (groups of common ethnic descent that intend to establish their loyalty to the state and become independent) are dangerous for the existing political order and peace¹⁷⁰. The strife of ethnic nations to establish an independent state has been feared by authors precisely because of their exclusivist and non-liberal structure (which supports diversity, freedom and tolerance). The ethnonation represents a homogenous nation, whereas nations can be multiethnic. Thus, Jackson Preece (2006: 140) notes

¹⁶⁹ For Young (2003: 10) nationalism is a modern ideology that links collective identity (intrinsically ethnic) to political claims. The nation achieves fulfilment through the possession of its own state. This vocation rests upon two master precepts: popular sovereignty and self-determination. The former locates sovereignty not in the institutions but in the 'people' and the latter asserts the right of the 'people' (understood in ethnic terms) to have their own state and autonomous self-rule; The difference between nationalism and ethnicity is that not all ethnic groups demand self-rule and, thus, turn into ethnonationalism and conversely, not all nationalisms are ethnic.

¹⁷⁰ See Harff and Gurr (2004), Smith (1986) and Connor (1994). Harf & Gurr (2004: 19) refer to four types of politically active ethnic groups that coexist with modern states: ethnonationalists, indigenous peoples, ethnoclasses and communal contenders – the first two types are 'peoples who once led a separate political existence and want independence or autonomy from the states that rule them today'.

that there seems to be incommensurability between belonging to a human community which encourages orthodoxy and freedom manifested as diversity¹⁷¹. Jackson Preece notes that traditionally security has always been pursued at the cost of cultural diversity¹⁷².

Ethnicity has been defined differently by authors, depending on the approach taken towards the construction and basic characteristics pertinent to ethnicity. Three major approaches to ethnic identity have been identified: primordialism, instrumentalism and constructivism.

4.8.1.1 Primordial, instrumental and constructivist accounts of ethnicity

Congruence amongst authors depicts the analysis of ethnicity and ethnic conflict in terms of three different analytical stands: primordialism, instrumentalism and constructivism.

Primordialists draw attention to the affective properties of ethnicity, whereby ethnic identity serves basic human needs and offers a safe place for belonging (Young 2003: 13). Fearon (2002: 3) suggests that primordialists treat ethnic groups and identities as fixed and biologically given. For Harff & Gurr (2004: 96-7) primordialists view modernization as a threat to ethnic culture and identity. Horowitz (2000: 52) defends a primordial view of ethnicity and argues that ethnic identity is established at birth for the majority of its members; 'ethnicity is based on a myth of collective ancestry, which usually carries with it traits believed to be innate'. Similarly, O'Neil

¹⁷¹ Jackson Preece (2006: 144) denotes that the ethnic state tends to act as if it is a homogenous ethnic community, whereby separation or 'ghettoization' is a practice that both predates self-determination and popular sovereignty, whereas the civic state relegates ethnicity, like religion to the private sphere – such minority and ethnic cultures are tolerated in the private sphere as long as they do not conflict with the prevailing civic culture.

¹⁷² Jackson Preece (2006: 152) argues that none of the existing security paradigms - national security, international security and human security are able to fully accommodate the distinct requirements of cultural minorities; both the civic state and international society subsume culture and ethnicity to the private sphere and are often ill-disposed to the recognition of diversity, the ethnic state has ethnicity as its core, however, this implies that it publicly recognizes one ethnic identity while excluding others; the paradigm of human rights is synonymous with the loss of cultural, minority rights and a sense of belonging. Instead, Jackson Preece (2006: 153) propagates a fourth paradigm of international security – that of multicultural security, comparable to the multiculturalism of Isaiah Berlin, Will Kymlicka, Joseph Raz and Judith Shklar: from this perspective, which rejoices in liberal diversity and freedom, ethnic and cultural minorities are not considered to be *prima facie* threats to the prevailing social order and international and national peace and security. Instead, multiculturalism suggests that minorities which are recognized and supported by the state are less likely to challenge the national and international order. This paradigm emphasizes the importance of a public discourse on freedom and mutual respect, which does not degenerate into a tyranny on behalf of the majority or minority.

(2007: 45) suggests that people are born into a specific identity, which remains fixed throughout life.

Instrumentalists focus on rational choice in social competition and claim that the self-interest can often be successfully matched with the group interest (Young 2003: 14). Instrumentalists mobilize ethnic identity to achieve material and political gains and political entrepreneurs capitalize on ethnic identities in order to construct political movements (Harff & Gurr 2004: 96-7).

For constructivists group identities merge and change over time, however, this does not mean that ethnic identities are malleable, rather they are seen as enduring social constructions based on many collective memories and experiences (Harff & Gurr 2004: 96-7). Gurr (2000: 5) undertakes a constructivist approach to ethnic identities by claiming that they are enduring social constructions that matter to the people who share them and how much they matter depends on people's political and social circumstances. Pieterse (2007: 16, 32) stresses that national identity is a historical process and rejects the idea of treating ethnic identity as fixed and static, rather he refers to a continuum of forms of identity, which are ongoing and relational. Ethnicity for Pieterse (2007: 34), similar to Benedict Anderson's definition of a nation, is an imagined community¹⁷³.

Due to the fact that this study has undertaken both a rationalist and constructivist framework of analysis, attention will be devoted throughout the study to the instrumental and constructivist approaches to ethnicity since they directly correspond to a 'logic of consequences' and a 'logic of appropriateness'. The three dominant approaches to understanding ethnicity have also stressed different factors that explain why some ethnic groups resolve to violence and conflict, and others remain peaceful¹⁷⁴.

¹⁷³ Pieterse dwells upon how ethnicities are being constructed and comes up with the following explanations: according to a social movement perspective which treats ethnic politics as a form of resource mobilization, ethnic groups are indeed interest groups who decide in a rational choice manner which action yields the best results. According to this framework of analysis, however, emotional attachment and belonging are neglected because of economic interests or political choices. Attachment and belonging, however, are crucial and very important to ethnicity, therefore, Pieterse (2007: 35) discusses also the idea of elite competition, based on Brass's assumption, whereby cultural forms, values and practices of ethnic groups become political resources for elites in competition for political power and economic advantage – thus ethnic communities are created and transformed by particular elites in modernizing and in post-industrial societies, undergoing dramatic social change (Brass quoted in Pieterse 2007: 34).

¹⁷⁴ According to Harff & Gurr (2004: 97) ethnic groups are most likely to mobilize when all three aspects of identity are present – there is a strong 'primordial' attachment, in combination with a strong imposed disadvantage; a common argument being that 'when peoples of different ethnic groups

4.8.1.2 Ethnic conflict

One major trait that has been identified as leading to ethnic conflict has been the issue of discrimination and the resulting from it grievances¹⁷⁵. For Stavenhagen (quoted in Gurr 2000: 65) a conflict is ethnic if the contending parties or actors identify themselves using ethnic criteria, ethnopolitical conflicts are conflicts in which claims are made by a national or minority group against the state or against other political actors. In this light it is obvious that the conflict in Kosovo was and continues to be ethnic. For Gurr (2000: 6; 1994) ethnicity leads to political action when ethnicity has collective consequences for a group in its relation with other groups and with states: 'Treat a group differently, by denial or privilege and its members become more self-conscious about their common bonds and interests. Minimize differences, and communal identification becomes less significant as a unifying principle'. Gurr adds that when ethnic identity is highly salient, it is likely to be the basis for mobilization and political action. The different treatment of Kosovo Albanians for decades under Yugoslav rule has strengthened their ethnic identity.

Oberschall (2007: 11-12) has proposed five theories of ethnic conflict: Ancient Hatreds (ethnic identities are primordial and resilient to change, only separation and ethnic cleansing can be successful in managing conflict), Manipulative Elites (ethnic elites contend for power by manipulating ethnic divisions, conciliation is difficult), Identity Politics (ethnic stereotypes are embedded in folk culture and institutions, conflict management consists in building overarching, shared identities that cut across ethnic lines), Security Dilemma (during state failure groups fear for their life and property, some mobilize for their own defence, security assurances from outside are needed) and Economic Roots (causes of conflict are poverty, economic stagnation, unemployment, corruption, calling for structural programs). Bearing in mind that both Kosovo and East Timor are poor regions of the world (East Timor more so than Kosovo), this study excludes the Economic Roots theory as having explanatory power as to why in Kosovo conflicting ethnic interests are high and in East Timor ethnic

compete directly for the same scarce resources and positions, their ethnic identities become more important to them'.

¹⁷⁵ Grievances as motivation for ethnic mobilization have been mentioned by Gurr (1993, 2000: 68), whereby he views incentives for political action concentrated around the following factors: resentment about losses suffered in the past, fear of future losses and hopes for relative gains. Saxton and Benson (2008) also deal with the issue of grievances by proposing that means, motives and opportunities are likely to influence ethnic mobilization.

heterogeneity has not translated into violence or conflict during the UNTAET rule. Rather, as plausible explanations for the existence of conflicting ethnic interests in Kosovo are deemed the Manipulative Elites theory, which can be traced back to the rise of Milosevic, the Identity Politics theory, which has ingrained ethnic stereotypes in folklore and institutions and the Security Dilemma theory, which is applicable to a failed state scenario and can explain the assurance provided to the Kosovo Serbs on behalf of the Republic of Serbia and Belgrade.

Harff and Gurr (2004: 117) establish three variables conducive to ethnic mobilization and conflict: 1) the degree of economic and political discrimination affecting an ethnic group, 2) the strength of group identity and 3) degree of cohesion among leaders and followers¹⁷⁶. When these three variables have a high value, then the likelihood that ethnic conflict will take place is relatively high. For Harff & Gurr (2004: 133) the ethnopolitical conflict is likely to make one of the following three demands: 1) exit or independence from the state, 2) demand for greater autonomy within the state, 3) recognition and protection of minority rights within a plural (multicultural) society.

Horowitz (2000: 137) has stressed the normative dimension to conflict by referring to a 'clash of values' and describes the incompatibility of institutions and values among different ethnic groups that gives rise to a need for domination. Kriesberg (2007: 248-252) has distinguished between destructive (seeking the destruction of the other) and constructive conflicts (concerning a negotiable issue), claiming that spoilers are destructive to a conflict¹⁷⁷ and deems reconciliation to be important.

By analysing the different theories on ethnic conflict it has become obvious that the existence of discrimination, as well as the nature of the claim made by the ethnic group (negotiable or not) have been salient explanations as to why ethnic groups mobilize. For the purposes of this study and stemming from observations in the

¹⁷⁶ Harff & Gurr (2004: 113) propose a structural explanation of ethnic conflict: 'people who strongly identify with their ethnic brethren and who live in an autocratic political system with low international economic status' are the most likely to challenge their oppressors, when the political system has used discrimination and violence to repress its peoples.

¹⁷⁷ Wolff (2006: 68) argues that there are different factors leading to the outbreak of ethnic conflict: 1) structural (weak states, secessionist claims, ethnic geography, ethnic concentration), 2) political (discriminatory political institutions, exclusionary nationalist ideologies, contentious inter- and intra-group politics at mass and elite levels, 3) economic and social factors (discriminatory economic systems, economic development and modernization) and 4) cultural factors (cultural discrimination - imposition of an official state language, problematic group histories – ethnic cleansing and genocide).

Kosovo and East Timor cases, conflicting ethnic interests are defined as interests pertaining to an ethnic group of a political¹⁷⁸ and irreconcilable nature (non-negotiable). In this sense, the conflicting ethnic interests of the Kosovo Serbs and Albanians are deemed as irreconcilable with regard to the peacebuilding initiatives of UNMIK since they rest upon two different imaginations of political goals: the former demand a reunion with Serbia and Belgrade, the latter envision independence for Kosovo. Indirectly, the study poses the question as to whether such political and irreconcilable conflicting ethnic interests can be solved by a UN TA for there have been also divergent views as to whether democracy can be promoted in divided societies.

4.8.1.3 Ethnic conflict and democratization

There are divided views as to whether ethnopolitical conflict hampers democratization. Some authors stress the importance of other political and economic factors¹⁷⁹. However, Gurr (2000: 157) claims that from 1980 – 1995, twenty-five countries made partial or abortive transitions to democracy and all these countries had relatively large ethnopolitical groups, of which nearly a half were in rebellion during the transitional period, therefore, according to Gurr it is plausible to infer that ethnopolitical conflict played a part in derailing democratic transitions. Keohane (2003: 279-281) supports this argument by noting that ‘people who are endemic in conflict with one another, and mutually suspicious, are typically unable to solve the problem of order by themselves’ and thus favours international intervention to solve the problem of order.

Some authors repeat John Stuart Mill’s¹⁸⁰ statement that ethnic heterogeneity alone in a political unit makes it more difficult to democratize and stabilize the state than it would have been in an ethnically homogenous state (Rüb 2007: 48).

There have been studies that examine the impact of ethnic diversity on social conflicts and civil wars¹⁸¹ and economists have connected ethnic diversity to investment growth and the quality of government, stressing that ethnic diversity often

¹⁷⁸ Note that most scholars of nationalism distinguish between a nation and an ethnie by claiming that the former feels loyalty towards the state and the latter is an ‘effective foci for group mobilization towards concrete political ends’ (Connor 1994: 101). Thus, unlike a nation that has achieved a political status in a state, an ethnie strives towards such political self-determination.

¹⁷⁹ For example Mousseau (2001: 562-3) finds that newly democratic ethnically heterogeneous societies appear to be no more prone to violence than other ethnically heterogeneous societies.

¹⁸⁰ In 1861 John Stuart Mill (quoted in Musgrave 1997: 153) remarked: ‘Free institutions are next to impossible in a country made up of different nationalities’.

¹⁸¹ Sambanis, Fearon and Laitin (quoted in Garcia-Montalvo & Reynal-Querol 2002: 1).

leads to corruption and low efficiency governments¹⁸². Consequently, although a bulk of literature exists, linking ethnic diversity to democratization, strangely the possible detrimental effects of conflicting ethnic interests on the ability of a TA to be successful remain underinvestigated.

This section has revealed that although the doctrine of nationalism stems from the democratic ideas of self-determination and self-government¹⁸³, ethnonationalism has been a foe to liberal democracy for the self-determination that ethnonations espouse is often different from the liberal standards of international society. Ethnonations seek to create a 'homogeneous state' and not the 'civic' states promulgated by international law. Therefore, as a solution to ethnically divided societies have often been suggested consociational forms of democracy that espouse greater decentralization and devolution of powers to the regional level of self-government, emphasizing power-sharing rather than rule by the majority and thus, avoid separation or independence.

4.8.1.4 Consociational democracies for ethnically divided societies

Most democracy theorists believe that 'deep ethnic and other societal divisions pose a grave problem for democracy and that *ceteris paribus* it is more difficult to establish and maintain democracy in divided than in homogenous societies' argues Lijphart (2002: 38). As a solution to this problem Lijphart (2004: 96) proposes a power-sharing mechanism of government to include communal interests and demands. Lijphart (2004) favours a model of proportional representation, parliamentary government instead of presidentialism, power-sharing in the executive, cabinet stability, federalism and decentralization and nonterritorial autonomy for those societies where groups are not geographically concentrated (own schools and right to education), thus calling for an extended power-sharing beyond the government and Cabinet. Subsequently, for Lijphart (2002: 39) sharing of executive power and group autonomy constitute the 'primary characteristics' of consociational democracy.

Consociationalists argue for a democratic governance of the majorities rather than the majority, they defend coalition governments and electoral systems based on

¹⁸² La Porta et al. and Mauro (quoted in Garcia-Montalvo & Reynal-Querol 2002: 1).

¹⁸³ Kedourie (1993: 23) has stated that nationalism is a doctrine of self-determination and for Smith (1998: 21) '...nation-building must...secure the independence necessary for citizens to participate in political decisions and govern themselves'.

proportional representation and favour federations that will give ethnic communities more territorial autonomy (O'Leary 2005: 11).

Moreover, theorists have argued that consociation in the form of power-sharing has become the prescribed method of conflict regulation applied by the international community, e.g. US, EU, UN (O'Leary 2005: 3). However, the promotion of power-sharing mechanisms in divided societies by the international community has not remained without its critics. The main criticism against consociationalism has been that this model often freezes and institutionalizes ethnic divisions rather than attempting to move to a new collective identity that transcends existing divisions (O'Leary 2005: 4-5). An argument that can well be applied to the Kosovo case. Pupavac (2005: 220-30) has been sceptical about the working of affirmative action in the former Yugoslavia by stating that once institutionalized, ethnic representation took on its 'own dynamic' which has led to an affirmation of identity¹⁸⁴, embedding the sense of 'victimhood' rather than eradicating it, a process that according to the author has made the work of the internationals in Bosnia-Hertsegovina seem 'never-ending'.

On the other hand, Paris (2004: 193) has criticized Lijphart's model of consociationalism by claiming that it rests on the assumption that government institutions will be comprised of individuals that can transcend cleavages and can join forces with the elites of a rival culture, however, for Paris such individuals are unlikely to land an electoral victory.

Contrary to the critics of consociationalism, there have also been authors who have espoused this model. O'Flynn & Russell (2005: 5-6) have argued that in cases where divisions of society are so real (Kosovo, Kashmir, Sudan, Congo) integration might not be a viable option and separation via power-sharing models, such as consociationalism, is the only viable option.

Scholars often cite the Ohrid Agreement of 2001 between Macedonian Albanian and Slavic communities as an epitome of consociational politics that prevented the spread of violence and returned stability to the country. The Ohrid Agreement of 2001 encapsulated the following consociational features of organization¹⁸⁵: executive power-sharing, proportionality, autonomy and veto rights

¹⁸⁴ In this vein Jenkins & Gottlieb (2007: 3) have stressed the need not only for institutional creations to manage social divisions, but also for social dialogue to foster peace and mutual coexistence.

¹⁸⁵ The Ohrid Agreement established the following principles (quoted in Ghani & Lockhart 2007: 282):

1. 'The use of violence in pursuit of political aims is rejected completely and unconditionally; Only peaceful political solutions can assure a stable and democratic future for Macedonia';

(O'Leary 2005: 25). Bieber (2005b: 114) has pointed out that since its first free elections in 1991 the Macedonian people have been governed by broad coalitions – including Macedonian and Albanian parties, this has been a tradition and has been left unchanged by the Ohrid Agreement of 2001. A key clause of the Ohrid Agreement has been to reform the public administration and establish a joint ownership of the state by the Albanian and Slavic Macedonian communities, reforms followed in the police force with affirmative action policies and an increased recruitment amongst Albanians, which since 2001 has extended beyond the stipulated requirements (Bieber 2005b: 117). However, for Bieber (2005b: 112-3) the Ohrid Agreement represented only partial success for it provided veto rights¹⁸⁶ to the Albanian minority in order to be able to block legislation in a number of areas (culture, use of languages, education, personal identities, use of symbols and in the sphere of local self-government), however no such rights were accorded to other ethnic minorities (non-Albanian) and the allocated veto rights could not protect the Albanian community against discrimination in other spheres of local self-government and legislation, e.g. in the sphere of economic policy. Nevertheless, the Ohrid Agreement represents a case of successfully transforming conflicting ethnic interests into more cooperative ones. Consociational-type politics have also been practiced in neighbouring Bulgaria since the end of the Cold War, whereby the Turkish minority has always formed part of the coalition government. However, the same cannot be said for Kosovo, where the Kosovo Serbs have consistently blocked the functioning of the local institutions and have refused to participate in the political process offered by the UN. Thus, Kosovo refers to an instance where consociational politics have not been successful.

Having analysed conflicting ethnic interests and under which conditions ethnicity is most likely to regress into conflict, as well as the governing solutions

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2. Macedonia's territorial integrity and sovereignty and the unitary character of the State are inviolable and must be preserved. 'There are no territorial solutions to ethnic issues';
 3. The multiethnic character of Macedonia's society must be preserved and reflected in public life;
 4. The Constitution must fully meet the demands and needs of all its citizens and comport with the highest international standards;
 5. 'The development of self-government is essential for encouraging the participation of citizens in democratic life, and promoting respect for identity of communities'.

¹⁸⁶ Generally Sisk (2003: 140) has criticized the idea of mutual veto envisaged by consociationalists as one often leading to 'political blackmail' and a 'cold peace' between conflict parties (no violence, but also no reconciliation). Instead Sisk advocates a 'more fluid form of democracy' that bridges the ethnic divide in the long-run.

proposed for ethnically divided societies, it is now time to specify how conflicting ethnic interests are measured.

4.8.1.5 Measuring conflicting ethnic interests

It is important to specify how one will measure the independent variable of conflicting ethnic interests. Since this study examines the role that conflicting ethnic interests play in the process of peacebuilding via TAs, such interests are localized in the peacebuilding context. Thus, conflicting ethnic interests are defined in political terms with regard to conflicts towards the peacebuilding initiative and its proposed end goal. In this sense, the conflicting ethnic interests of the Kosovo Serbs and Albanians are deemed as irreconcilable because they rest upon two different imaginations of success: the former demand a reunion with Serbia and Belgrade, the latter envision independence for Kosovo.

Most of the studies conducted on ethnicity have used the *Index of Ethnolinguistic Fractionalization (ELF)* as an indicator of ethnic diversity. This index is based on raw data from the Atlas Narodov Mira (1964) compiled in the former Soviet Union and divides the world into ethnic and linguistic groups, determining their potential to start ethnic conflict (Garcia-Montalvo & Reynal-Querol 2002: 2). However, *ELF* has been plagued by several deficiencies: firstly, it refers to a situation of ethnic diversity valid in the 1960s, secondly, it represents only those ethnies that are politically relevant (integrated into the power structure of the state), however many conflicts today arise precisely because an ethnic group is not present in the power structure of the state and is striving towards it¹⁸⁷ and thirdly, according to *ELF* Somalia would be a highly homogenous society due to the fact that most Somalis share the same religion, language and customs, however, Somalia in the 1990s has been a highly-fractionalized country along clan lines¹⁸⁸. Subsequently, Fearon has constructed an *Index of Ethnic Fractionalization* to mirror the changed nature of ethnic diversity after the Cold War. However, this study does not make use of the above-mentioned indices of fractionalization and ethnolinguistic fractionalization, nor of the numerous indices that have followed, measuring ethnic fragmentation and polarization¹⁸⁹,

¹⁸⁷ Pointed out by Garcia-Montalvo and Reynal-Querol (2002: 3).

¹⁸⁸ Consult Fearon (2002: 4) for further detail.

¹⁸⁹ Esteban and Ray (in Garcia-Montalvo & Reynal-Querol 2002: 7) construct a measure of ethnic polarization, stating that for the index to have any value there needs to be a high degree of intragroup

religious, linguistic and cultural fragmentation¹⁹⁰, for this study views ethnic divisions and ethnic heterogeneity as unproblematic.

Initial ethnic divisions do not necessarily transform into conflicting ethnic interests, as witnessed by the TA in East Timor. This study argues that conflicting ethnic interests can best be measured with regard to the inclusiveness of different segments of society in the peacebuilding process and therefore, analyses the multiethnic structure of the peacebuilding process in order to derive the existence or absence of political and irreconcilable differences¹⁹¹. Conflicting ethnic interests are manifested, and in this sense measured, according to the participation of ethnic groups in the peacebuilding process. Following an inductive study of the Kosovo case, the following criteria have been derived to measure conflicting ethnic interests:

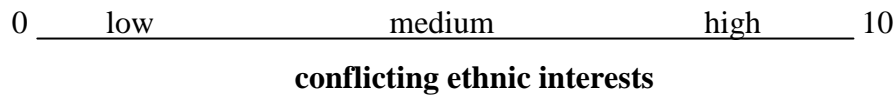
- Minimal participation of ethnic minorities in local elections;
- Minimal participation of ethnic groups in the government (multicultural facets of government);
- The occurrence of ethnic violence after UN deployment (the start of the peace-building process) – large-scale murders, massacres, destruction of opposing religious sites and homes;
- The existence of parallel judiciary and government institutions;
- The division of the region/ territory according to ethnic lines;
- The segregation of the public service sector (education, transport, health, police systems);
- The formation of political parties according to ethnic lines, existence of multiethnic parties;
- Minimal reconciliation efforts (Commissions);
- Impaired freedom of movement due to minority security fears;
- Discrimination against ethnic groups

homogeneity and a high degree of intergroup heterogeneity, as well as a small number of significantly sized groups. In this sense, Kosovo would represent a polarized society according to these criteria and East Timor would not represent such a society because of the huge amount of groups concerned and the lack of possibility for these to polarize. East Timor would rather represent a society that is ethnically diverse.

¹⁹⁰ See Fearon 2002.

¹⁹¹ In the case of Kosovo, the conflicting ethnic interests are irreconcilable with regard to the end status of the province: the Albanians desire nothing less than independence; the Serbs and Belgrade are willing to cede all but independence.

An ordinal scale is proposed to measure the degree of conflicting ethnic interests¹⁹².



The ordinal scale ranks the above-mentioned criteria and the differentials attached to them in the following manner: low conflicting ethnic interests are those where the answer is 'yes' to three or less criteria, medium conflicting interests represent a positive answer from four to six criteria and high conflicting ethnic interests require a positive answer to seven or more criteria.

Based on a comparative study of the Kosovo and East Timor experiences in peacebuilding via TAs, this study has come to the conclusion that conflicting ethnic interests (as witnessed in Kosovo) undermine the promotion of local ownership and the success of a TA. Conflicting ethnic interests also have a detrimental effect on the levels of local participation and benchmarks achieved. In the following section more light is shed on the intervening variable of local participation.

4.8.2 Local participation

It has already been demonstrated that in the realm of peacebuilding scholars have defended divergent views as to whether one should involve the local population in the process of peacebuilding, and if so, at what point and to what extent has been debatable. For simplification purposes all those scholars in favour of local participation during peacebuilding are referred to as the pro-integration camp and all those against the involvement of the local population in the process of peacebuilding are called the counter-integration camp.

The main arguments defended in the pro-integration camp have been that the participation of the local population in peacebuilding will:

- 1) increase success¹⁹³;
- 2) increase accountability¹⁹⁴;
- 3) increase the domestic legitimacy of the TA¹⁹⁵;

¹⁹² The scale is similar to the one employed by Gurr in *Minorities at Risk* (1993).

¹⁹³ The 'exclusion of people from any aspect of state building will continue to cause costly interventions to founder' (Chopra & Hohe 2004: 303).

¹⁹⁴ Chandler (2005: 314-5) refers to the growing 'consensus' that international experts and bureaucrats can govern a country better than politicians accountable to the population.

- 4) increase sustainability¹⁹⁶;
- 5) adjust the asymmetry between 'insiders' and 'outsiders'¹⁹⁷;
- 6) include the will of the people¹⁹⁸;
- 7) strike a balance between national ownership and international partnership¹⁹⁹ ;
- 8) increase the effectiveness of peacebuilding²⁰⁰ .

On the other hand, the main arguments for an exclusion of local participation from the peacebuilding process (counter-integration) can be summarized as follows:

- 1) local participation will decrease the independence of officials (judges, etc)²⁰¹;
- 2) will lead to violence²⁰²
- 3) create the 'elite fallacy'²⁰³
- 4) enable spoilers to penetrate the process²⁰⁴
- 5) in diverse populations, it will make devolution difficult²⁰⁵

¹⁹⁵ Keohane (2006: 58) states that the time of the 'unique legitimacy' of UN operations due to a ratification of the UN SC has passed away for such legitimacy is not n-sync with the dynamics of democratic theory. Knoll (2007: 55) points out:

To maintain its domestic legitimacy, an administration that assumes the governance of territory for an indefinite period of time cannot merely be the product of international diplomatic leadership, it must also resonate with the inhabitants under its guardianship.

¹⁹⁶ Reich (2006: 6) reiterates that experience has shown that projects are unsustainable if they are completely conceptualized from outside, local actors need to be integrated into the design and decision-making process, in order for the process to work at all.

¹⁹⁷ Reich (2006) views the insider/ outsider adjustment as able to provide better structural opportunities. Anderson and Olson (2003: 36 quoted in Reich 2006: 21) define the groups/ partners in the conflict as the following:

Insiders are widely seen as those vulnerable to conflict, because they are from the area and living there... Outsiders are those who choose to become involved in the conflict and who have personally little to lose.

¹⁹⁸ Kristensen (2006: 150) has argued that by imposing conditionality, the 'will of the people' element of self-determination has been neglected.

¹⁹⁹ For Sangqu (In GA/10635, 2007) peacebuilding should be based on national ownership (countries can set priorities to benefit their people) and international partnership (quick injection of resources to ensure stability).

²⁰⁰ Jeong (2005: 33) claims that 'ownership of the process by broad sectors of society is the key to the effectiveness of the participatory mechanisms upon which the implementation of peace accords depends.

²⁰¹ Caplan (2005: 465).

²⁰² Chesterman (2004), Paris (2004) and Wolff (2006).

²⁰³ 'Picking the winners' has not aimed to reach out to the people and promote a democratic participatory culture; winners are picked as having often studied in the West and being able to converse in English over matters such as 'reform', 'market' and 'civil society' and yet another problem is that in post-communist societies elites have a lot of control and citizens remain alienated from politics (Sinanovic 2003: 121-3). Ignatieff (2003: 74) sees a controversy between the preaching of building local capacities and at the same time employing the best educated and young as drivers, translators, etc.

²⁰⁴ Chesterman (2004), Narten (2007), Paris (2004).

- 6) does not belong to the functions of the TA²⁰⁶ and
- 7) increase dependency on international presence²⁰⁷.

Although both camps of authors make compelling arguments for and against integration, based on an inductive study of the Kosovo and East Timor experiences, this study comes to the conclusion that a decisive factor that contributed to the quick achievement of local ownership in East Timor was the intense participation of the local population in the peacebuilding process, the intense rate of ‘Timorization’ as opposed to the hesitant ‘Kosovarization’²⁰⁸.

The measurement of local participation in the peacebuilding process of the TAs in Kosovo and East Timor rests on Dingwerth’s (2005: 74) supposition that ‘all identified stakeholder interests ought to be treated as equally important and legitimate’, meaning that all identified stakeholders ought to be treated with equal respect and right to participation.

For Knoll (2007: 47) local participation/ devolution has signified not only to put ‘local institutions on a sustainable path’ but also the ‘degree and pace’ with which authority is being devolved²⁰⁹. Drawing on this argument, the current study analyses the local participation in Kosovo and East Timor by measuring the processes of ‘Kosovarization’ and ‘Timorization’, in other words by analysing the following criteria:

- high degree of devolution of institutions to local actors (e.g. special powers retained for the UN SG/ other international peacebuilders)
- high pace of devolution of institutions to local actors
- high election turnout
- high levels of general will²¹⁰ of the population to participate

²⁰⁵ ‘Who are the ‘locals’ – it is naïve to assume that they are one coherent group – it might be that they have different views’ Mobekk (2005: 383-4). This study argues that in the case when such divergent views are in conflict, it is difficult to have local participation and devolution of power.

²⁰⁶ Caplan (2005), Chesterman (2004) (‘inadequacy and inconsistency’ of means and ends)

²⁰⁷ Narten (2007).

²⁰⁸ For more detail consult chapters five and six.

²⁰⁹ Beauvais (quoted in Knoll 2007: 47) notes that the ‘shift from the fractional representation in East Timor’s National Consultative Council to the expanded representation in the East Timorese National Council led to a considerable increase in the legitimacy of UNTAET’.

²¹⁰ It is important to note that will is not the same as capacity and what has been striking when comparing the Kosovo and East Timor cases has been the will of the population in East Timor to participate in the established structures, even though they had much less experience with self-

- high representativeness of peacebuilding - to what extent were all segments of society represented and incorporated
- lack of obstruction from neighbouring/ other countries to local participation

Similar to the measurement of conflicting ethnic interests, an ordinal scale is proposed, ranging from 0 to 6, with low local participation, when a positive answer can be attributed to two or less criteria, medium participation when a positive answer can be attributed to three criteria and high participation constituting a positive answer (yes) to four or more criteria.

0	low	medium	high	6
Local participation				

According to Hamre & Sullivan (2002) the post-conflict reconstruction project is generally seen as consisting of four pillars: security, justice and reconciliation, social and economic well-being, governance and participation. These four pillars of post-conflict resolution have also been analysed with regard to local participation in UNMIK and UNTAET. The next section turns attention to the third causal phenomenon (identified at an international level) to have an impact on the local ownership achieved by a TA, namely benchmarks achieved.

4.8.3 Benchmarks achieved

Some scholars have observed that there is an inherent tension between the desire to transfer power to the local population and the progress made by this population in terms of achieving specific benchmarks. Knoll (2007: 51) describes a 'tension' between the devolution of local institutions to the local population and standards, referring to the quality of local participation. In other words, Knoll defends the idea that local participation *per se* is not sufficient, the quality of local participation is important. The quality of local participation, argues the current study, is mirrored by the variable of benchmarks achieved. In other words, the benchmarks achieved within

government than Kosovo, much less capacity as well, since East Timor remains the poorest country in Asia.

a post-conflict society (failed states) are safeguards for the quality of the participation; they are safeguards of minority rights and human rights protection (as the case in Kosovo has demonstrated).

This study does not observe a tension between local participation and standards or benchmarks achieved. Local participation is deemed to be responsible for the democratic side of local ownership and benchmarks achieved are deemed to be responsible for the liberal side of local ownership, which together with the existence of conflicting ethnic interests determine *SLOP*. As previously argued, benchmarks achieved is a necessary factor for the establishment of a functioning society with state institutions and sustainable peace – it is the guarantee that illiberal segments of society will not be included in the governing structures. Based on an inductive comparison between Kosovo and East Timor, it has been established that an important criterion defining benchmarks achieved has been the clarity of the UN TA mandate.

A major difference between Kosovo and East Timor has been the structure and goal-setting of the two mandates provided for in United Nations Security Council Resolution (UN SCR) 1244 (Kosovo) and UN SCR 1272 (East Timor). Whereas UN SCR 1244 had a vague wording and pledged commitment to contradictory principles (such as territorial integrity of the Federal Republic of Yugoslavia (FRY), simultaneously calling for the ‘substantial autonomy’ of Kosovo), UN SCR 1272 establishing UNTAET had the clear purpose of administering the non-self-governing territory and prepare it for independence right from the start. For Doyle & Sambanis (2006: 303) UN peace operations can succeed based on whether they have the right mandate and on whether the mandate is well implemented. The authors (Doyle & Sambanis 2006: 20-1) distinguish between fulfilling a mandate and establishing peace. The difference between fulfilling a mandate and being able to achieve local ownership is one that also the present study addresses.

Thus when measuring the benchmarks achieved, the following criteria have been established as useful:

- Clear mandate²¹¹
- Clear objectives

²¹¹ Thakur and Schnabel (2001: 20) observe the ‘need for clear mandates, matching military and financial resources and performance benchmarks’. According to Smith and Dee (2003: 102) and Doyle and Sambanis (2006) an achievable and feasible mandate impacts also positively on the success of the mission.

- High number of total benchmarks set is achieved
- No support of powerful international actors for positions contrary to UN TA

This section presupposes a qualitative analysis of the benchmarks achieved, basing its findings on content analysis from reports of the Special Representative of the UN Secretary-General (SR SG) for Kosovo and East Timor, as well as other international organizations that have been active in the peacebuilding endeavour, such as the Organization for Security and Cooperation in Europe (OSCE) with regard to Kosovo. The degree of benchmarks achieved is once again measured with the help of an ordinal scale, whereby a positive answer to three or more criteria signifies a high degree of benchmarks achieved, a positive answer to two criteria represents medium achievement and a positive answer (yes) to one or less criteria suggests low amount of benchmarks achieved.

0	low	medium	high	4
Benchmarks achieved				

Up till now attention has been devoted to the definition and measurement of the causal phenomena of the study (on an international, national and local level) that have been found to influence the outcome of the dependent variable – success of a UN TA with regard to local ownership achievement. In the coming section the dependent variable under study is analysed.

4.8.4 Measuring success of UN transitional administrations

It has already been noted earlier in this chapter that as a successful UN TA will be deemed such a TA that not only hands over power to the local population, but one that achieves *de facto* local ownership, meaning that the local population is not only committed to, but also exercising liberal self-government. Talentino (2007) has noted that the success of a TA or a peacebuilding mission is in the eye of the beholder. This

statement mirrors the divergent approaches found within the peacebuilding literature to measure and identify successful peacebuilding missions²¹².

4.8.4.1 Defining successful transitional administrations

Different authors have provided different measures of success based on the studies conducted and variables used within the peacebuilding literature. Some scholars have taken a minimalist approach to defining success in terms of negative peace achieved, others have strived towards a maximalist notion of success in terms positive peace being introduced. Thus, Durch (1993a: 12) elaborates that it is not clear when conflict containment and resolution works:

...success and failure in peacekeeping are not readily definable in black and white terms. Is a mission that keeps foes apart for ten years, but whose involuntary departure is followed by war, a success for what it sustained for a decade or a failure for what happened afterward? Is a mission that keeps foes apart indefinitely a success for having spared them the bloodshed, or a failure for having made them dependent on its presence, for having removed the need to settle old grievances?

Durch's statement illustrates the complexity surrounding success definitions of peacekeeping and peacebuilding missions. If one employs the time factor of measuring success, then it is unclear whether it is not too soon to judge success in Kosovo and East Timor, for as Karl Popper (In Shain & Linz 1995: 76) has noted 'Democracy calls for deep-going, value-oriented changes in the public mentality – it calls for time'.

This study does not undertake a *post-factum* assessment of the success of a peacebuilding mission, instead the study proposes to go a step further and instead of evaluating the success of a mission with regard to the positive or negative peace achieved, to evaluate a mission with regard to the institutional basis created for a democratic and liberal self-government. In other words, this study views local ownership as a crucial prerequisite not only for the achievement and stabilization of

²¹² Dobbins et al. (2005: 218) name Namibia, Cambodia, El Salvador, and Mozambique successes of nation-building, where viable nation-states have emerged. Smith & Dee (2003: 96, 98) note five missions as successful: Namibia, El Salvador, Cambodia, Mozambique and Croatia, claiming that the most important ingredient of success is legitimacy (moral, legal, political). Doyle & Sambanis (2006: 21) list four cases of UN peace operations' failure (Somalia, Bosnia, Rwanda, Cyprus) and six cases of success (Congo, El Salvador, Cambodia, Eastern Slavonia in Croatia, Brcko in Bosnia, East Timor) with regard to establishing 'participatory peace'. Thus one can witness that to some degree the missions listed as successful overlap and yet due to the fact that the authors apply different criteria for measurement, the classification categories of successful missions also diverge.

positive and negative peace, but also for the ability of a UN TA to hand over power to the local population and leave a particular territory (as an exit strategy). The following section provides a conceptual clarification to the term of local ownership and stipulates how the term is to be measured.

Since the success of a TA is viewed as a staged variable, whose second stage - the ability to hand over power to the local population and leave a particular territory, is directly observable, this study focuses on the first stage of success of a TA, namely, the achievement of local ownership. Based on the inductive comparison between Kosovo and East Timor, this study contends that a TA will not leave a particular territory and hand over power to the local population unless meaningful local ownership (commitment to and exercise of liberal self-government) is achieved.

4.8.4.2 Defining local ownership

One of the biggest challenges facing contemporary peacebuilding has been how to bridge the spoiler's phenomenon with the achievement of local ownership and stable and durable peace. This study has process-traced the postulated achievement of local ownership in both UNMIK and UNTAET and has, thus, identified as hindering factors for its achievement high conflicting ethnic interests, low local participation and few benchmarks achieved (due to lack of clarity of mandate and objectives).

However, similar to the divergent views and factors employed toward the measurement of success of peacebuilding missions, so have there been different views on the content and substance of local ownership.

The concept of local ownership originated in the development scene. Narten (2007: 4) traces back the idea of local ownership to the 1995 Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), which declared that 'for development to succeed, the people of the countries concerned must be the 'owners' of their development policies and programmes'. Similarly, within the humanitarian aid community Anderson (1996 & 1998 in Narten 2007) has stressed the need for local capacity-building, which links the external assistance with the need to support local capacities for peace and reflects the notion of locally owned peace processes. Saxby (2003: 2) notes that in development discourse 'ownership' does not have its conventional meaning, i.e. 'rights of exclusive possession', nor does it have its organizational meaning referring to owners of

businesses or members of non-profit organizations, instead, it refers to relations among stakeholders in development and their ‘respective capacity, power or influence to set and take responsibility for a development agenda, and to muster and sustain support for that’. Saxby (2003: 2) further identifies three main groups of stakeholders: the governments of the developing countries, the communities and organizations in these countries (outside the government) and the donors/ multilateral development agencies/ financial institutions.

Risse & Leimkuhl (2007: 149) stress the importance of diversity when discussing local ownership for they view local ownership as the inclusion of representatives of the different stakeholder groups in the governance forms themselves.

Lavergne (2003: 2) has emphasized that local ownership is not just commitment *per se*, signifying common goals between internal and external actors, but it also implies rights, such as the right to property (Moore), the right to set an agenda, etc. Ownership can be ‘national’ (referring to the government in question), but it can also be ‘local’ referring to the general public. At the root of local ownership rests the liberal idea that people have the right to be governed by their own government²¹³ (Lavergne 2003: 3). On the contrary, Chesterman (2007: 3) defines local ownership as having moved away from its figurative understanding of possession or property and states that today it ranges in meaning from a sense of attachment to a programme to very seldom actual controlling authority. Lavergne (2003: 4) emphasizes the various forms that local ownership can have: ‘If you are a member of civil society, you will tend to think of local ownership as participation. If you are a member of local government, you will think of local ownership as a right of representation because you’re elected or otherwise represent the people. If you are a donor, you will think about it ... as local commitment, responsibility and accountability’²¹⁴. Similarly,

²¹³ A point also emphasized by Kühne et al. (2008: 7) who treat local ownership as a reflection of the legal right to self-determination:

Practice has shown that international peacebuilding efforts often fail because project planning and implementation is often carried out with insufficient inputs and without respect for local structures and traditions; Local ownership is the widely accepted metaphor (rather than a precise term) to remind all internationals within as well as outside of peace missions not to commit this error.

²¹⁴ In this light Cooper & English (2005: 14-16) have argued that there are three distinct levels of discussing ‘ownership’ – at an institutional level (IMF, WB, UN), at an ideological level (liberal reformist framework) and at a national level. Lavergne (2003: 6) argues for program-based approaches

Chesterman (2007: 9-10) refers to six meanings of ownership: responsiveness, consultation, participation, accountability, control and sovereignty.

The separation of various levels of local ownership and the different meanings attached to the term, pending on the position one holds in society, is important to this study for it emphasizes both the need for local ownership to be democratic (have local participation, which mirrors the inclusiveness of the peacebuilding process) and for it to be liberal (achieve the internationally set benchmarks, which mirrors the degree of responsibility and commitment). Thus, as a working definition of local ownership this study stipulates that it includes both the *commitment to and exercise of liberal self-government*. The commitment to and exercise of liberal self-government in a state will be present when conflicting ethnic interests are low, local participation is high and the amount of benchmarks achieved is high, in other words, when a greater *Space of Local Ownership of Peacebuilding (SLOP)* is present.

Thus, if for Saxby local ownership implies above all the ability to influence programmes and take responsibility, for Lavergne local ownership implies not only commitment, but also a right, a right to representation and participation. In order to construct a working definition for local ownership this study involves the local, national and international dimensions of TAs and assumes that local ownership should include both a local commitment and a right to self-government in a liberal way. In other words, local ownership should be both democratic and liberal. However, this study also acknowledges that local ownership can neither be democratic, nor liberal, in other words it is virtually non-existent, when the initial roots of violence and conflict remain unsettled (as is in the case of Kosovo). Notably local ownership stems from the idea of self-government and self-determination has its origins in liberal political theory. Therefore, this study prefers to use the term of liberal self-government, when referring to local ownership, implying that it is not merely self-determination, but it is self-determination in a liberal way.

In terms of commitment and rights to self-government that undermine the definition of local ownership, authors have pointed out that these commitments and rights to self-government on behalf of the local population depend on the available capacities and the existing political will. Some authors have used both concepts of

to local ownership that will define it in a context-specific environment due to the numerous definitions the concept can have.

capacities and political will interchangeably (Morgan), whereas others have stressed the difference in terms of capacity-building being a purely exogenous understanding (pertaining to external actors) and political will referring to an endogenous motivation (Brinkerhoff 2007). For Morgan et al. (quoted in Brinkerhoff 2007: 111) 'capacity development is an endogenous process that engages not just the abilities and skills, but the motivation, support and aspirations of the people within a country', whereby for Brinkerhoff the term 'motivation, support and aspirations' refer to the political will of the people and not just capabilities. For Brinkerhoff political will equals local ownership²¹⁵.

Whether capacities to exercise local ownership are external or internal resembles much the overarching debate within the literature as to whether one should have local ownership throughout peacebuilding or only as an end. On the other hand, authors have been adamant about the importance of political will in peacebuilding. Fukuyama (2004a: 35) states that 'Insufficient domestic demand for institutions or institutional reform is the single most important obstacle to institutional development in poor countries'.

Samuels & von Einsiedel (2003: 4) claim that the 'ultimate success or failure of the state-building endeavour rests with the will of the people. Managing the expectations and wishes of the local population is vital to any possible success in state-building'. Samuels and von Einsiedel (2003: 7) acknowledge the difficulty of achieving inclusiveness and representativeness as one of the biggest challenges in post-conflict societies with deep divisions, such as ethnic conflict or religious conflict between groups, however 'unless the government that emerges from the state-building process is seen as fully inclusive and representative of the population, it will not be viewed as legitimate'. For Samuels and von Einsiedel (2003: 8) current strategies to ensure an inclusive and representative government have taken the form of quotas which often run the risk of 'entrenching or even radicalizing' existing ethnic or religious tension, however the authors point out that no viable alternatives to quotas are present. This study agrees with Samuels and von Einsiedel's remarks with regard to quota entrenching in Kosovo. Thus, congruence has shown that the political will of the population is a very important ingredient of local ownership.

²¹⁵ Brinkerhoff (2007: 112) further states that the World Bank and the International Monetary Fund have vastly documented the problems of donor-imposed policies and thus view local ownership as a mechanism that increases aid-effectiveness.

Although there seems to be congruence amongst authors with regard to the liberal origins of the idea of local ownership and it implying the right to self-government, there have also been several dilemmas toward the achievement of liberal self-government. Firstly, scholars have emphasized the spoiler's dilemma²¹⁶. Kühne (1996: xxii-xxiv) has noted that international peacebuilders are confronted with the dilemma of whom to accept as a local partner²¹⁷, concluding that 'it is important to integrate all social groups and warring factions into the peace process from the very outset, and to provide the necessary resources for this'. Kühne has, thus, stressed the need to integrate all social groups in society in order to avoid the entrusting of potential spoilers with too much power. Stedman²¹⁸ (1997: 7) has defined spoilers in the following manner:

Peace creates spoilers because it is rare in civil wars for all leaders and factions to see peace as beneficial. Even if all parties come to value peace, they rarely do simultaneously, and they often strongly disagree over the terms of an acceptable peace. A negotiated peace often has losers: leaders and factions who do not achieve their war aims. Nor can every war find a compromise solution that addresses the demands of all the warring parties.

Authors have viewed spoilers in a dynamic way, stating that some of them might mutate in the spoiler ladder such as the Palestine Liberation Organization - PLO, pinpointing that spoilers operate on the rational basis of costs and benefit, whereby the costs of spoiling refer to the costs associated with the resumption of fighting and with the costs due to loss of peace dividends (Zahar 2003: 115-122).

Secondly, the issue of spoilers has been seen as responsible for a shift towards prioritizing security over democracy by current peacebuilding undertakings, a shift that has undermined local ownership. Whitehead (2004: 161-4) states that the desire to silence the spoilers has resulted in a 'shift towards democracy as security', rather than liberalization, away from the traditional democratic process and institutions as resting

²¹⁶ A dilemma identified by Narten (2007). Brinkerhoff (2007: 113-4) defines spoilers as 'conflict entrepreneurs' that have a strong interest in prolonging the conflict.

²¹⁷ Weiss & Hoffman (2005: 304) identify spoilers as a challenge to peacebuilding and humanitarianism by claiming that 'working with spoilers may grant legitimacy to otherwise illegitimate actors'.

²¹⁸ Stedman (1997: 8) distinguishes between inside and outside spoilers, the former 'signs a peace agreement, signals a willingness to implement a settlement, and yet fails to fulfil key obligations to the agreement'; the latter type of spoiler is excluded from the peace process or excludes himself from it. Stedman (1997: 10) has distinguished also between 'limited', 'greedy' and 'total' spoilers, depending on the aims that spoilers have and on their commitment to achieving these goals: limited spoilers have limited goals; on the other side of the spectrum lie the total spoilers who pursue total power and exclusive recognition of authority and the greedy spoilers lie in between with goals that 'expand or contract based on calculations of cost and risk'.

on 'local ownership' (authenticity) to the preferences of external democracy promoters, signifying a shift away from consent to a democracy based on control. In this line, Chesterman (2007: 6) has noted that the approach to post-conflict reconstruction as applied by the UN unveils a contradiction between the stated end (legitimate and sustainable national self-governance) and the available means (benevolent autocracy under the rule of the UN SC). Due to the described incompatibility between the means and ends of TAs, Chesterman has preferred to speak of local ownership as an end only²¹⁹.

Thus, Chesterman (2005: 342) has warned against the inaccurate and counter-productive use of local ownership in transitional administration projects:

... If genuine local control were possible, then a transitional administration would not be necessary... insincere claims of local ownership lead to frustration and suspicion on the part of local actors.

Instead of referring to local ownership, Chesterman (2005: 343) views clarity as a necessary precondition for the success of TA: clarity of the strategic objectives, clarity of the relationship between international and local actors and how this will change, and clarity with regard to the role of the international actors in order to achieve their objectives. Chesterman, Ignatieff & Thakur (2005: 364, 382) acknowledge the importance of having enlightened leaders that take part in the transitional administration, as well as the management of clear exit strategies. However, if for Chesterman et al. clarity implies a clear exit strategy, for this study clarity of the mandate implies going beyond an exit strategy, it implies having local ownership that will enable a functioning society to develop on its own and not require renewed external assistance.

Thus far, the conceptual underpinnings of local ownership and its dilemmas have been pointed out. In the next section different approaches toward the measurement of local ownership are elaborated upon.

²¹⁹ For Chesterman (2007: 9) the whole ownership discourse in the 1990s strengthened the link with democracy and more so, to democracy perceived as a right. In 2004 Kofi Annan (quoted in Chesterman 2007: 10) stated:

...we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to the United Nations norms and standards.

4.8.4.3 Measuring local ownership

The measurement of local ownership has been depicted as a difficult task. Reich (2006) has indicated that one of the problems of measuring local ownership²²⁰ has been the fact that it is a ‘slippery’ concept with no internationally-agreed upon meaning.

Brinkerhoff (2007: 113-4) has named three challenges impeding the measurement of local ownership: 1) the observability of local ownership is impaired due to the fact that will and ownership cannot be directly observed, but must be inferred from other factors, which often leads to post-hoc assessments; 2) distinguishing between will and capacity is difficult; 3) subjectivity and bias in perceptions of local ownership. For Brinkerhoff (2007: 114) local ownership²²¹ is not easily regarded as a binary variable (yes, there is, no there is not), instead it lends itself to assessments of a ‘relative degree of presence/ absence’. In line with this argument the present study has preferred to speak of a *Space for Local Ownership of Peacebuilding (SLOP)* seen as an interaction and interplay between three levels of analysis: the international, national and local one.

Moreover, Brinkerhoff (2007: 117) has elaborated that the domestic decision-maker’s degree of ownership emerges as a function of a calculus based on demand-side factors (underdeveloped in post-conflict societies) and the supply side of international aid. The suggested *SLOP* proposes also an interplay of the demand-side and supply-side of local ownership (named the democratic and liberal ownership dimensions).

For Saxby (2003: 2) local ownership is high, when 1) ‘intended beneficiaries substantially influence the conception, design, implementation and review of development strategies’, 2) ‘implementing agencies are rooted in the recipient country and represent the interests of ordinary citizens’ and 3) ‘there is transparency and accountability among the various stakeholders’.

²²⁰ For Reich (2006: 5) local ownership does not imply the possession of the process by local actors, but rather the capacity or power to set or take responsibility of the development agenda.

²²¹ Brinkerhoff (2007: 115-6) disaggregates local ownership into six categories: government initiative, choice of policy/ program, mobilization of stakeholders, public commitment and allocation of resources, continuity of effort (long-term activity), learning and adaptation, strong ratings on all six components add up to a strong case of local ownership.

Thus, there have been numerous ways of measuring local ownership. Based on the Kosovo and East Timor experiences, this study has concluded that *SLOP* can be optimized when conflicting ethnic interests are low, local participation is high and benchmarks achieved are high.

4.8.4.4 Summary

The concept of local ownership is relatively new in the peacebuilding literature. Due to the primacy of the failed state dimension in post-conflict peacebuilding, many scholars and practitioners of peacebuilding have been arguing against local ownership of the peacebuilding process by specifying the danger of empowering potential spoilers, recurrence to violence and disintegration as reasons.

Instead, this study argues for an inclusion of local actors in peacebuilding and proposes an aggregate measure of local ownership (LO), as consisting of an interplay between democratic local ownership (DLO) - local participation, liberal local ownership (LLO) - benchmarks achieved, and conflicting ethnic interests or the absence of a common collective identity. In order to escape the vagueness and subjective bias attached to the concept of local ownership, the present study proposes the measuring of a *Space for Local Ownership in Peacebuilding (SLOP)*, referring to different levels of analysis of the peacebuilding activity. Thus, conflicting ethnic interests are predominantly encountered at the micro or local level of analysis of a TA, the local participation dimension refers to the national, or meso level of analysis and the benchmarks achieved refer to the international or macro level of analysis. In this respect this study proposes that successful peacebuilding, corresponding with a higher *SLOP* is a function of all three levels of analysis, and not merely a function of a macro analysis, or purely political micro analysis.

4.9 Conclusion

The current chapter has attempted to illustrate figuratively the proposed research model of *SLOP*. By comparing the Kosovo and East Timor experiences in peacebuilding this study has found that there have been three major differences with regard to UNMIK and UNTAET that have influenced the level of local ownership achieved in both regions and the departure of the UNTAET from East Timor and the

continuous presence of the UN in Kosovo. On a local level, the differences have referred to the presence of conflicting ethnic interests, on a national level there has been an unparalleled wish to participate in the created structures for self-government in East Timor and a call to devolve power as quickly as possible to the local population and on an international level the major difference between the two case studies has been in the clarity of the mandate and objectives set to determine the benchmarks achieved. On this basis, a *Space for Local Ownership of Peacebuilding (SLOP)* model has been proposed to measure the space for local ownership in post-conflict societies undergoing peacebuilding. The benefits of the proposed model can be summarized as follows.

Firstly, *SLOP* has stressed the need for local participation and inclusiveness of the peacebuilding process, contrary to the dominant peacebuilding strategies, which envisage peacebuilding as a process of social engineering and technocratic building of institutions and the rule of law, rather than local capacities and democratic will formation.

Secondly, *SLOP* has presented a dynamic approach to the measurement of peacebuilding success by emphasizing the interplay and interaction between the macro, meso and micro levels of analysis in post-conflict societies that determine the success of the UN TA in terms of local ownership achieved. Thus, this model introduces a dynamic interplay of factors on different levels of analysis and instead of measuring the space promoted after a UN TA has left, it suggests analysing the actual black box of the peacebuilding process itself in order to find out why in some societies local ownership can be achieved, whilst others seem doomed to have eternal international presence.

Thirdly, having selected two cases with similar background characteristics whose peacebuilding problems seem to resonate all over the world – from Afghanistan to Iraq and Africa (due to a lack of local ownership and due to the conflicting ethnic interests present), the proposed *SLOP* model hopes to be useful in the analyses of current and future cases of UN TAs and peacebuilding.

5. THE SPACE FOR LOCAL OWNERSHIP OF PEACEBUILDING IN KOSOVO

5.1 Introduction

This chapter examines the United Nations Interim Administration Mission in Kosovo (UNMIK1999-) until August 2008. The aim of the analysis has been to uncover those factors that have hindered the ability of UNMIK to hand over power to the local population almost ten years after its establishment in 1999. Bearing in mind that UNMIK continues to exist despite the unilateral *Declaration of Independence* of the Kosovo Assembly on 17 February 2008, the conclusion of this study has been that UNMIK has been unsuccessful in terms of handing over power to the local population and therefore, the aim of this chapter has been to uncover why this has been the case and to list those factors that have had a hindering effect on the achievement of local ownership. Clues underlying the success or lack thereof in Kosovo have been sought on the local, national and international levels of UNMIK policy initiation and execution, as well as by examining the root causes of the conflict that led to UN involvement in the first place. Therefore, in the following section a detailed analysis of the background to the Kosovo conflict is provided.

5.2 Conflict background

The Kosovo conflict has been and continues to be a conflict about territorial claims. It is a conflict, whereby both dominant ethnic groups in the region claim that the Kosovo territory belongs to them. Kosovo Albanians have always strived toward independence, whereas the Kosovo Serbs and mainland Serbs have deemed Kosovo to be the birthplace of the Serbian state and a cradle of Orthodox monuments. The background to the Kosovo conflict and the mass exodus of Albanian population from

Kosovo in 1998 and 1999, resulting from mass ethnic killings, is analysed with regard to the roles played by demography in the region, the existence and explanation of powerful Kosovo myths and the manipulation thereof on behalf of local elites and leaders, such as Slobodan Milosevic. Thus, even though the population of Kosovo has been heterogeneous, historically both dominant ethnic groups in the region have made territorial claims toward the region, based on demography.

5.2.1 Demography

Today Kosovo has a total area of 102 173 square kilometres and a total population of 2 100 000 inhabitants, of which 92 per cent are Albanians, 5,3 per cent are Serbs, 0,4 per cent are Turks and 1,1 per cent Roma²²². However this demography was considerably different in 1991, when Albanians constituted 81,6 per cent of the population and Serbs 9,9 per cent²²³. Historically Kosovo Albanians and Serbs have attributed special importance to demography in their claims for territorial control of Kosovo. Lund (2001) notes that forceful expulsions and population transfers in and from the region occurred already in the beginning of the 20th century.

There have been diverging views as to when the Albanians first settled into Kosovo. For Knudsen & Laustsen (2006: 30-1) the Albanians have inhabited the land for a longer period of time than the Serbs since they are the direct descendants of the Illyrians and thus, were in Europe together with the Romans and Greeks and did not arrive, as the Serbs did, only in the sixth century to settle down.

In contrast, Lund (2001: 138) argues that the Albanians began to move into Kosovo only in the late nineteenth century and eventually became numerically dominant due to forceful expulsions of Serbs from the region several times: during the Muslim Ottoman rule, during the Balkan wars and during World War I, counterbalanced by Serb occupations of the area and brutal Serbianization and Albanian expulsion. Bellamy (2001: 106) even refers to attempts by the Serbs to exterminate the Muslim population of Kosovo shortly after conquering Kosovo from the Ottoman Turks in 1912-3 and points to a figure of 25,000 Kosovar Albanians being killed at this time. During the centuries of Ottoman rule in Kosovo²²⁴ there were

²²² Statistical Office of Kosovo (SOK), data referring to the year 2006.

²²³ Statistical Office of Kosovo (SOK), data referring to the year 1991.

²²⁴ Smyrek (2006: 172) points out that *Kosovo* is the Serb word for the region, *Kosova* is the Albanian name of the region and the official name in the Serb and Yugoslav administrative language is *Kosovo-*

'spectacular demographic shifts' and as of 1912 Kosovo was incorporated into Serbia (Malcolm 2002).

Thus, the roots of the Kosovo ethnic conflict can be traced well back in time. These roots have often been accompanied by powerful myths that have strengthened the relevance of ethnic identity in the region.

5.2.2 Kosovo myths

For both ethnic components within the territory the region was viewed as a historical cradle – for Serbs Kosovo meant the cradle of the medieval kingship crowned by the Battle of Kosovo Polje in 1389. The Battle at the Field of the Blackbirds was fought on 28 June 1389 near modern-day Pristina. During this battle a local lord Lazar Hrebeljanovic chose to fight rather than submit to vassalage, and although historians agree that the battle was a draw with all leaders of the factions being killed, epics describe Lazar as having selected a 'Heavenly Kingdom' based on righteousness rather than a 'Worldly Kingdom' of power and comfort, defending the idea that it is better to die free in battle than live in shame, subsequently Lazar became a martyr (King & Mason 2006: 27). Smyrek (2006: 172) elaborates that the Field of the Blackbirds constituted the heartland of the medieval Serb Empire and served as a capital of the Nemanjic Dynasty, which reached its pinnacle under Stefan Dušan, at that time the Albanians lived mostly in the mountains and were pastoral farmers.

Kühle & Laustsen (2006: 20-3) also mention the Serbian myth relating to Kosovo, by claiming that when King Lazar decided to choose the heavenly kingdom (in a choice offered by the Virgin Mary), the Serbs became the chosen people and thus, Kosovo Polje came to be regarded as the birthplace of modern Serbia and the cradle of the most 'holy' places. According to the Serbian myth of Kosovo the region is an ancient Serbian land, marked by the heroic suffering of its heirs and by the Albanian oppressors that occupied it. Thus, Serbs have claimed that Kosovo is Serbia because of all the blood and graves that exist there and it will still be Serbia even if there is not a single Serb left in the province (Kühle & Laustsen 2006: 27-8).

Metohija, to denote an officially autonomous province within the Republic of Serbia. According to the author *Metohija* denotes the southern plain of Kosovo and the decision to drop the second part of the name in UN SCR 1244 proved that the UN SC deemed the 1990 constitution of the Federal Republic of Yugoslavia, which declared Kosovo-Metohija as an autonomous province within Serbia, obsolete .

For Albanians Kosovo was the birthplace of their national movement with the League of Prizren being established in 1878, however the Albanians had been consistently denied the right to unite with the ‘motherland’ Albania and eventually the key focus of the Kosovo Albanians centred on obtaining equal status²²⁵ with the other Slavic nations in Yugoslavia (Pouyé 2005: 11). The Albanian myth describes how Husayn (the grandson of Muhammad) died in a battle in Kosovo in a decision to resist and fight for independence and this makes him a martyr (Knudsen & Laustsen 2006). Consequently, martyrdom is present in both the Kosovo Serb and Albanian myths.

However, Malcolm (2002: xlvii) exposes both the Serb and Albanian myths of Kosovo as false, by claiming that the beginning of the Serbian kingdom was in Rascia, an area beyond Kosovo’s north-western border and most of the important medieval Serbian monasteries and churches were also built outside Kosovo. This view is rejected by the majority of authors. For King & Mason (2006: 26) the patriarchate buildings in Pec, the monasteries in Decani, and Gracanica, and the Holy Archangels monastery in Prizren, built back in the fourteenth century ‘made Kosovo a centre of the Serbian Orthodox Church’. Denitch (1994: 115) describes the sanctity of Kosovo as follows ‘Kosovo is where the greatest monuments of Serbian medieval culture are located. It is the battleground where the medieval Serbian kingdom was destroyed by the invading Muslim Turks, who ruled over the defeated Serbs for 500 years’.

Simultaneously, Malcolm (2002: xlix) denounces the idea that Kosovo is a historic unit²²⁶, for there was a vilayet of Prizren from 1868 and a vilayet of Kosovo from 1877 onwards, but these vilayets had a very different shape from those of modern Kosovo. For several hundred years Kosovo was not part of Serbia because there was no Serbia to be part of, Bulgarian khans or tsars held Kosovo from the 850s until the early 11th century and the Byzantine emperors until the final decades of the twelfth century (Malcolm 2002: 41).

²²⁵ However, due to the fact that during the war Kosovo Albanians had sided with Fascist Italy, Kosovo was treated as a nationality (*narodnost*) and not a nation (*narod*) in communist Yugoslavia (Pouyé 2005: 14).

²²⁶ A point also supported by Zaum (2007: 128), according to the author Kosovo did not have a well-defined political identity until the 20th century, although there was an Ottoman vilayet of Kosovo in 1877 – its borders bore no resemblance to today’s Kosovo, which emerged in its present form only after World War II as part of Serbia in Tito’s Yugoslavia. After Milosevic terminated Kosovo’s autonomy in 1989 and imposed direct rule from Belgrade, Kosovo Albanian leadership declared in 1991 the ‘Republic of Kosova’ and started to organize a parallel state, financed by taxes on Albanians and in the diaspora, the writer Ibrahim Rugova was elected President.

The role of religion in the Kosovo conflict has been denied by the majority of authors. Malcolm (2002) refers to the fact that there is no Islamic political movement amongst Albanians, therefore, denouncing the possibility of a religious conflict. Kühle & Laustsen (2006: 29) further denounce the idea that the Kosovo conflict has been a religious one – between Serbian Orthodoxy and Albanian Islam – rather they propagate the view of a ‘civil religion’ which rests upon the idea that specific dates and rituals are performed based on national remembrance of myths and because of the historical role of the nation, in this sense the authors view nationalism as having substituted religion. Thus, Knudsen & Laustsen (2006: 28) draw attention to the fact that the Serbs were the least religious ones from the former Yugoslavia peoples, whereas the religion of the Albanians is Albanianism.

Although Sandole (1999: 144) refers to the Kosovo conflict in terms of religion – the Serbs are reliving the Ottoman legacy there for they see the Albanians as Muslim once again being dominant and trying to take away their land, the point that Sandole is making is closely related to the above-mentioned role of national identity and nationalism taking on the form of political religion²²⁷. Emmert (in Sandole 2007: 8) refers to Kosovo as a celebration of martyrdom, on the one hand, and as a demand to liberate all Serbs from oppression for many Serbs still live with the Ottoman perceptions of an epic poetry that idealizes strikes against the oppressor: ‘Whoever is a Serb and of Serbian blood and comes not to fight at Kosovo...Let nothing grow from his hand... until his name is extinguished forever’²²⁸.

However, authors do point out to a rift between Kosovo Serbs and Albanians, which has been ascribed mainly to the different languages spoken. Malcolm (2002: 57) links Kosovo Albanians and their language to the Thracians and Vlachs (of Romania) who spoke Latin, he also confirms that in medieval Kosovo Albanians were a minority and all the names of towns and villages were indeed Slavic. King & Mason (2006: 2) describe the rift between Serbs and Albanians in Kosovo as deeper than ‘that between any other nationalities in Yugoslavia’ mostly due to the language spoken, for if Bosnians, Serbs and Croats all speak Slavic languages, then Albanians speak a non-Slavic language incomprehensible to non-Albanians. Moreover, the interethnic

²²⁷ A term used by Kedourie (1993).

²²⁸ Sandole (2007: 8) quotes Volkan as identifying the Serbs with a chosen trauma, whereby an ethnic group feels ‘helpless and victimized by another group’ and shares a ‘narcissistic injury’, this chosen trauma is incorporated into the group’s identity and passed on to future generations. Thus, in Sandole’s words Kosovo today might be reliving the ancient Kosovo myth of the Kosovo Polje.

marriage rates in Kosovo had been the lowest in the entire Yugoslavia (5 per cent in 1982) (King & Mason 2006: 3). On this basis one can argue that Kosovo is inhabited not only by two ethnic groups, but rather that it is inhabited by two separate nations – the Serbian and the Kosovo Albanian one, both requiring the expression of their political status and self-determination.

In the following sections the growing rift between the two ethnic groups of Albanians and Serbs is depicted.

5.2.3 Kosovo dynamics after World War II

The present section describes how Kosovo became integrated into Serbia and Yugoslavia after World War II.

In 1945 two delegates from the ‘National Liberation Council’ of Kosovo (Dušan Mugoša and Mehmet Hoxha) attended the Anti-Fascist National Liberation Assembly of Serbia and said that Kosovo wished to be made a province within Serbia. On 3 September 1945 Serbia’s People’s Assembly passed a law establishing ‘the autonomous region of Kosovo-Metohija’ (oblast) and declared it a constituent part of Serbia. However, under the law passed in 1963 the autonomous status of Kosovo and Vojvodina disappeared since all provinces were to be decided on internally by each republic. Subsequently, in 1968 Kosovo Albanians took to the streets in protest²²⁹, arguing that it is not fair that 370,000 Montenegrins have their own republic, while 1.2 million Albanians are denied autonomy (In Malcolm 2002: 325). Following the Soviet invasion of Czechoslovakia in 1968, Tito aimed at gathering all the anti-Soviet allies he could get on the Balkans and a rapprochement followed between Albania and Yugoslavia, whose direct beneficiaries were the Kosovar Albanians: from 1969 Kosovo Albanians were permitted to fly their own national emblem on the Albanian flag (Malcolm 2002: 325).

1974 was the epitome of Albanian national interests as far as constitutional rights were concerned, for according to the Yugoslav constitution of 1974 (which remained in force until the final break-up of Yugoslavia) Kosovo and Vojvodina were given a status equivalent in most ways to that of the six republics, possessing their own

²²⁹ Malcolm (2002: 325) points out that some of the slogans during the protest in Pristina were: ‘We want a university!’, ‘Down with the colonial policy in Kosovo!’, ‘Long live Albania!’

direct representation in the main Yugoslav federal bodies²³⁰ (Malcolm 2002: 327). However, the distinction between nation and nationality withered away with the 1974 Yugoslav Constitution which put both principles on an equal footing, Yugoslavia was described as ‘a federal republic of free and equal nations and nationalities’ (Malcolm 2002: 328). The primary fear of not giving republican status to Kosovo was that it would secede from Yugoslavia and join Albania²³¹.

Malcolm (2002: 330-1) states that the inner migration of Serbs and Montenegrins to Serbia proper from Kosovo cannot be attributed only to economic causes²³².

In March 1981 a student at the University of Pristina who found a cockroach in his soup threw down his tray and started a protest pleading for ‘Food’ and ‘Conditions’ (Malcolm 2002: 334). This protest formed the cornerstone of the subsequent resistance against Serbian rule and domination.

5.2.4 The rise of Milosevic

With Milosevic’s rise to power in 1989 the *Democratic League of Kosovo* (LDK) under the leadership of Dr. Ibrahim Rugova was created, which initially advocated non-violence and passive resistance, however as the Serbian policies in Kosovo became more extreme (in 1996 Albanian street names in the town of Gjakova were renamed to Serbian ones, the Institute of Albanian Studies in Pristina was closed down by administrative decree and its academic staff evicted), the Kosovo Liberation Army (UCK, in English: KLA) was established and the overall situation in Kosovo

²³⁰ Malcolm (2002: 327-328) poses the question as to why these two provinces were never given the status of a republic – to this he provides the following answers: 1) the republics were treated as ‘nations’ (Serbian: *narod*) which were potentially state-forming units, the provinces, on the other hand were a homeland to ‘nationalities’ (Serbian: *narodnost*), which comprised of a displaced bit of a nation, the main part of which lived elsewhere (Hungary, Albania), therefore a nationality could not be a constituent nation in a federation and could not have a federal unit of its own, because the nation of this nationality already had its own state elsewhere – Hungary and Albania. However, in the case of Moldova this principle of distinction between nation and nationality seemingly did not apply as the Romanian-speaking Moldavians were allowed to form their own republic in the former Soviet Union.

²³¹ A policy by the Yugoslav government could have been initiated aiming to prove that the Albanian identity in Kosovo is distinct from the Albanian identity in Albania, whereby the former is based mostly on a Gheg dialect of Albanian and the latter refers above all to the Tosk dialect of Albanian, however such a policy was never pursued by the Yugoslav governing bodies for fear that granting such a republican status to Kosovo would lead to increased resentment on behalf of the Serbs (Malcolm 2002).

²³² According to a Serbian Academy of Sciences survey of 500 Serb households in Kosovo in the mid-1980s, when giving reasons for their migration 41 per cent mentioned indirect pressure from Albanians, 21 per cent referred to direct pressure, 8,5 per cent referred to verbal abuse and 7,5 per cent to material damage, whereas 5 per cent had undergone personal injury (In Malcolm 2002: 380-1).

deteriorated (Malcolm 2002: 353-356). For Pouyé (2005: 20) the aim of the LDK²³³ was merely to ensure the legality of the Kosovo institutions of 1974 as opposed to the changes made by Milosevic in 1989.

As Milosevic met with a group of discontented Serbs on 24 April 1987 in Kosovo Polje, a suburb of Pristina, he proclaimed (quoted in King & Mason 2006: 36):

You should stay here both for your ancestors and your descendants... Yugoslavia does not exist without Kosovo! Yugoslavia and Serbia are not going to give up Kosovo.

According to King & Mason (2006: 37) Milosevic managed to change the political debate in Serbia from socialist ideology to one of nationalism. By 1989 Kosovo society was almost entirely segregated – Serbian and Albanian children attended school in different shifts and different rooms, there were parallel Albanian governing structures set up supported by émigré taxes that were to provide education and health care (King & Mason 2006: 39). Thus, with Milosevic's rise to power the toleration of ethnic diversity in Kosovo deteriorated.

5.2.5 NATO's Operation "Allied Force" in 1999

In 1998 a repressive policy towards Kosovar Albanians commenced, orchestrated by President Milosevic, as a result by the end of May at least 5,000 Kosovar Albanians had been executed, 1,5 million people (90%) of the population were expelled from their homes and 225,000 Kosovo Albanian men were missing; the neighbouring countries such as Macedonia, Albania, Montenegro and Bosnia had approximately 745 000 refugees with another 61 000 refugees scattered all over the world²³⁴.

On 24 March 1999 *Operation Allied Force* started²³⁵, without an authorization of the UN SC, however it followed an exhaustion of non-violent political means to reach an agreement between Kosovo Serbs and Albanians, namely, the internationally

²³³ Pouyé (2005: 38) depicts not only a conflict between Serbs and Albanians in Kosovo, but also between UCK members and LDK supporters.

²³⁴ Data provided by the History Factsheet of NATO.

²³⁵ Kifner (1999) reports how in the night of 24 March 1999 as NATO bombs began falling over Yugoslavia, an Albanian (Hani Hoxha) witnessed how black-masked Serbs rampaged Djakovica (one of the KLA strongholds) shooting, cutting throats and burning houses; according to witnesses in the first night about 50 or more shops and 35 houses were burnt and the Serbs were being helped by the police; the attacks were organized against the wealthy families and the intellectuals – those known for supporting the KLA; most men aged 15-50 were targeted because of suspicion that they support KLA or are rebel fighters.

organized Rambouillet Conference²³⁶. The Rambouillet talks were held in early 1999, aiming to end violence in Kosovo and to reach a peaceful solution through dialogue. These talks foresaw an interim agreement for the reaching of a final settlement within three years and expressed commitment to the territorial integrity of FRY and neighbouring countries, defending the protection of rights of all national communities in Kosovo, free and fair elections, amnesty and release of political prisoners. Rambouillet warned against a unilateral change of interim status. These talks envisaged that the people of Kosovo be governed by democratically accountable Kosovo institutions, own legislative, executive and judicial institutions, an Assembly and President of Kosovo, a local police; human rights were to be protected by the OSCE and other international organizations, as well as an Ombudsperson²³⁷. However, these talks failed, as by the given deadline, 23 February 1999, neither the Kosovo, nor the Belgrade delegation was prepared to sign the Rambouillet agreement. Thus the talks were suspended, followed by follow-on talks in Paris, on 15 March 1999, which failed to be signed by the Serbian side until the deadline of 22 March 1999. Apparently the Serbian delegation was against the envisaged political settlement for Kosovo to be reached by the will of the local population, as well as the fact that it declared all envisaged Kosovo institutions as illegal and stated that these needed to be scaled down (Weller, 1999). NATO bombing of Kosovo ensued. It was only on 10 June 1999 that the bombing under *Operation Allied Force* was suspended, after the *Military Technical Agreement between the International Security Force ('KFOR') and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* was signed on 9 June 1999, acknowledging the deployment in Kosovo under UN auspices of effective international civil and security presences.

5.2.6 KFOR

The Kosovo Force replaced *Operation Allied Force* and entered Kosovo on 12 June 1999 under a UN mandate. The NATO-led international force was responsible for

²³⁶ On the discourses preceding the NATO intervention in Kosovo in 1999, the French President Chirac (6 February 1999, at the Rambouillet Peace Talks) stated 'To the representatives of the two parties, Serbs and Albanians of Kosovo, I say that peace is in your hands. I appeal to your responsibilities' and US Secretary of State Albright (5 February 1999, Rambouillet Peace Talks) exclaimed 'We cannot succeed if the parties refuse to live up to their responsibilities. But we would not be meeting our own responsibility to them or to ourselves if we do not do what we could to lead the way' (In Malmvig 2006: 74).

²³⁷ See Weller (1999).

securing a safe environment in Kosovo. Under its initial objectives were listed the provision of a safe environment, demilitarisation of the Kosovo Liberation Army (KLA), support for the international humanitarian effort and deterrence of any renewed hostilities against Kosovo by Yugoslav and Serb forces. Eventually, KFOR's objectives were transformed to include more civilian functions, in line with the provision of international aid, democracy and civil society, such as assistance with the return of refugees and displaced persons, reconstruction and demining, medical assistance, security and public order, security and ethnic minorities, protection of patrimonial sites, border security, weapons destruction, support for civilian institutions (law and order, judicial and penal system). KFOR was established to contain four Multinational Task Forces (MTFs) – North, East, South and West. Despite the declaration of unilateral independence the presence of KFOR continues on Kosovo soil, similar to UNMIK.

5.3 UNMIK (1999 -)

After *Operation Allied Force* suspended its bombing, the United Nations adopted on 10 June 1999 UN SCR 1244 under Chapter VII of the UN Charter, meaning that the situation in Kosovo had been identified as a threat to international peace and security. Authors have described UNMIK as one of the most ambitious missions in UN history²³⁸. UN SCR 1244 (Annex I) called for an end to violence and repression in Kosovo, for a withdrawal of military, police and paramilitary forces and foresaw the establishment of international civil and security presences. UN SCR 1244 foresaw the establishment of an interim administration for Kosovo to ensure conditions for a 'peaceful and normal life for all inhabitants in Kosovo'. The resolution called for return of all refugees and displaced persons and foresaw the establishment of an interim political framework agreement, providing for a substantial self-government of Kosovo (in line with the Rambouillet Accords and the sovereignty and territorial integrity of the Federal Republic of Yugoslavia) and called for a demilitarization of KLA, economic development and stabilization of the region.

²³⁸ King & Mason (2006: 21) note that in Kosovo 'on a per capita basis the world has invested 25 times as much money and 50 times as many troops in Afghanistan'.

Initially, four pillars of the UNMIK were introduced to be headed by different international organs (UNMIK 2004: 1):

Pillar I (Humanitarian Assistance) was headed until June 2000 by the United Nations High Commissioner for Refugees (UNHCR) and was replaced in 2001 by the 'Police and Justice' section led by the UN;

Pillar II referred to 'Civil Administration' and was under the aegis of the UN;

Pillar III 'Democratization and Institution-Building' was led by the Organization for Security and Cooperation in Europe (OSCE);

Pillar IV 'Reconstruction and Economic Development' was led by the European Union (EU). On 30 June 2008 Pillar IV of UNMIK ceased to exist as the European Union ended its funding for the pillar²³⁹.

Although the UN TA in Kosovo was well organized and will probably go into history as one of the most ambitious missions in UN history, the reality is that the conflicting ethnic interests between Kosovo Serbs and Albanians have been somewhat undermined, moreover, it was accepted that by institutionalizing affirmative action quotas for both the majority and the minority in Kosovo, the conflict would be solved and functioning institutions that incorporate norms of good governance would eventually lead to local ownership. However, the Kosovo case has demonstrated that attempting purely to achieve benchmarks does not help in terms of diminishing the conflicting ethnic interests, on the contrary it leads to their further entrenchment and as witnessed by the March 2004 violence can destabilize the situation further despite the presence of a UN TA. In the following sections is illustrated how the presence of conflicting ethnic interests in Kosovo persisted during the peacebuilding process undertaken by UNMIK and negatively impacted not only on the achievement of benchmarks, but also limited the participation of all segments of society in the newly-created institutions for provisional self-governance, thus, entrenching the divisions between Kosovo Albanians and the minority communities even more.

²³⁹ S/2008/458, Para. 11.

5.4 Conflicting ethnic interests

The conflicting ethnic interests in Kosovo have been irreconcilable because of the different political ends envisaged by the two main parties to the conflict. The Kosovo Albanians have desired independence since the beginning of the 20th century, whereas the Kosovo Serbs have always perceived Kosovo as part of Serbia, thus, in essence, the conflict between Kosovo Serbs and Albanians has been a territorial one²⁴⁰.

The director of the Belgrade *Forum for Ethnic Relations – Centre for Tolerance*, Dusan Janjic, has described the Serbian - Albanian relations in Kosovo in terms of an ethnic conflict, whereby both parties strive towards dominance, accordingly, there have been initiatives on both sides since the fall of the Ottoman Empire to establish their particular dominance in the region (in Jurekovic 2006: 79). Thus, Jurekovic (2006: 80) has identified five stages in which collective rights issues have been coupled to the Kosovo status question.

Phase one began 1912/1913 with the Balkan War and the establishment of the 'State of the Serbs, Croats and Slovenes' and ended with the victory of the Yugoslav communist party over the German and Italian occupiers. In 1941 Kosovo belonged to Greater Albania, which depended on Germany and Italy – in this period the Albanians took revenge on the Serbs and ill-treated them.

Phase two ended in 1963. The 1946 constitution awarded Kosmet (Kosovo and Metohija) an autonomous status in Yugoslavia. According to the 1963 constitution Kosmet was downscaled to an autonomous province in Serbia.

Phase three ended with Tito's death in 1981. This phase was marked by the 1974 Constitution, whereby Kosovo and Vojvodina were declared as constitutive elements of the Yugoslav state, *de facto* equating the provinces with the status of a republic. Kosovo Albanians took up the most important political posts in the province. Many Serbs left the province in this era and protested that the rights given to the Albanians were against Serbia.

²⁴⁰ Kai Eide (S/2005/635: 7) reports on the changing patterns of identity in Kosovo during the UN TA: on the one hand, the Kosovo Albanians are becoming more assertive and are establishing themselves as the ruling majority, on the other hand, the Serbs are willing to preserve their identity and fear being marginalized in linguistic, religious and economic terms.

Phase four (1981 – 1999) refers to the disintegration of Yugoslavia²⁴¹ and the strengthening of both Albanian and Serbian nationalism. Milosevic used the Serbian fears stemming from the autonomy in Kosovo and came into power. In the 1990s the Albanians constructed a parallel institutions system in Kosovo. The Albanian resistance was peaceful and was based on Ghandi's philosophy of non-violent resistance. In 1992 Ibrahim Rugova was elected President. Milosevic reacted with repressions in Kosovo, yet, simultaneously he tolerated the parallel system in Kosovo for the boycotting actions of the Albanians allowed all seats to go to his socialist party in Kosovo. The conflict escalated in 1998/9 due to the clashes between the armed Albanian guerrilla UCK and the Serbian police.

Finally, phase five encompasses the period since 1999 and is characterized by the presence of a military and civilian transitional administration, aiming to transform the behaviour of belligerent parties into a cooperative one and to find a solution to the main causes of the conflict.

Jurekovic's report indicates that the Kosovo status question has been and continues to be a struggle worth fighting for for both ethnic communities. The Kosovo status question remained a dominant issue to haunt the success of UNMIK and to deepen the ethnic divisions.

In 2005 Kai Eide, Special Envoy to Kosovo, reiterated in his report to the UN Secretary-General (SG) that 'regrettably little has been achieved to create the foundation for a multi-ethnic society' in Kosovo, as required under UN SCR 1244, for there should be higher rates of crime prosecution (impunity is also impeding returns) and the illegal occupation of homes and illegal construction on property should be abandoned²⁴². Thus, Eide urged for more reconciliation²⁴³:

Kosovo will not in the foreseeable future become a place where Kosovo Albanians and Kosovo Serbs are integrated. They probably never were. Nevertheless, the reconciliation process should start. It must come from inside Kosovo and be embraced by all communities. The international community must encourage reconciliation and provide active support.

²⁴¹ Part of the debate surrounding the right of Kosovo to declare independence has been traced back to the disintegration of Yugoslavia in 1991. According to Opinion No. 8 of the Badinter Commission of 1991 Yugoslavia was in a process of dissolution due to the fact that Serbia and Montenegro had adopted a new constitution in 1992, which signified for the Commission the existence of a new state (Musgrave 1997: 200). However, had the Badinter Commission declared it a case of secession on behalf of the former Yugoslav republics, Kosovo would have had a case for achieving independence already in 1999.

²⁴² S/2005/635, Para. 44.

²⁴³ Ibid, Para. 77.

On the point of reconciliation it is interesting to note that unlike East Timor, which has set up its East Timorese Commission on Perceptions, Truth and Reconciliation, such an attempt has been failing in Kosovo. Vetlesen (2006: 49) draws the attention to the idea that one cannot speak of conciliation in Kosovo for even before the war the two groups of Albanians and Serbs had seldom intermixed and intermarriage was virtually unheard of.

Table one has been constructed, using data predominantly from the Progress Reports of the UN SG on UNMIK²⁴⁴, and it aims to demonstrate that conflicting ethnic interests are still present in Kosovo, almost ten year after the deployment of international peacebuilders.

Table 1: Conflicting ethnic interests in Kosovo (1999 – 2008)

Conflicting ethnic interests	Kosovo (UNMIK, 1999-)
I. Minimal participation of ethnic minorities in local elections	+
II. Minimal representation of ethnic groups in government	+
III. Occurrence of large-scale ethnic violence during UN TA	+
IV. Existence of parallel judiciary and government institutions	+
V. Division of the region according to ethnic lines	+
VI. Segregation of the public service sector	+
VII. Formation of political parties according to ethnic lines	+
VIII. Impaired freedom of movement because of minority security fears	+
IX. Lack of effective reconciliation	+
X. Discrimination against ethnic groups	+

Sources: UN SG Reports on UNMIK²⁴⁵, author: D.C.S.

The table indicates, that despite the deployment of a UN TA in Kosovo, conflicting ethnic interests have persisted and, with the unilateral *Declaration of Independence* on 17 February 2008 of the Republic of Kosovo, minority participation in the government

²⁴⁴ It is worthy to observe that the data found in these progress reports has been mild in comparison to the grave human rights abuses and genocide referred to by numerous NGO reports and independent scholars (e.g. Booth, King & Mason).

²⁴⁵ S/2007/134, UNMIK (2004: 2), S/2005/88, S/2002/62, S/1999/1250, S/2000/538, S/2002/137, S/2002/1126, S/2008/211, S/2001/218, S/2006/707.

has decreased. In the following section an explanation is provided to the ten criteria used to determine the existence of conflicting ethnic interests.

- I) There has been minimal participation of Serbs in municipal and general elections in Serb majority areas (north Mitrovica) or Serb majority enclaves due to the existence of parallel institutions²⁴⁶ directly financed from Belgrade. Often signals to boycott elections have been sent directly from Belgrade²⁴⁷.
- II) The stipulated minimum rate of 16,6 per cent for community minorities in the Provisional Institutions for Self-Government (PISG) has remained unachieved. Following the unilateral declaration of independence in 2008, Serb representation in PISG has declined steadily²⁴⁸.
- III) The March 2004 violence occurred in the ethnically divided Mitrovica region of northern Kosovo, whereby 29 Serbian Orthodox churches and monasteries were destroyed, 800 homes and more than 150 vehicles were damaged, resulting in 19 dead, 1,000 injured and more than 4,000 displaced persons (UNMIK 2004: 2).
- IV) Parallel judiciary, education, health care, municipal, telecommunications, pensions and police institutions have been constructed by the Serb majority north of the river Ibar²⁴⁹. The northern municipalities of Zubin Potok, Zvecan, Leposavic are not eligible to receive funds appropriated to them under UNMIK due to the fact that they have been boycotting UNMIK's work since the summer of 2006²⁵⁰.
- V) There has been a virtual division of the region along the River Ibar, whereby Serbs inhabit the north and Albanians the south²⁵¹.
- VI) Minority communities use humanitarian bus services²⁵². In January 2007 the humanitarian train and bus services were transferred from UNMIK to

²⁴⁶ Jurekovic (2006: 100) claims that today the financial aid from Belgrade is responsible for the obstructing policy of the Serbs in the North of Kosovo.

²⁴⁷ S/2002/137, Para. 7.

²⁴⁸ S/2008/211, Para.8.

²⁴⁹ S/2002/1126, Para. 7.

²⁵⁰ S/2007/134, Annex I, Para.61.

²⁵¹ Belgrade is opposing the UN and EU to carry out their missions in the North of Kosovo, paying the salaries of all government departments there (Purvis & Anastasijevic 2008: 31).

²⁵² S/2005/88, Annex 1, Para. 32.

the Ministry of Transport and Communications²⁵³; however, the existence of such a minority transport system was not abolished.

- VII) There are no major political parties to date in Kosovo that have a mixed representation, thus fostering a cross-cutting political identity of its members. Major political parties have either Albanian or Serbian representatives²⁵⁴.
- VIII) Freedom of movement in 2007 improved somewhat, however, incidents such as mining the railway line that runs to Mitrovica, the stoning of a bus carrying Kosovo Serbs and roadblocks before buses carrying Kosovo Serbs continue to occur²⁵⁵.
- IX) Despite all the past and present antagonisms there has been no truth and reconciliation commission set up for Kosovo, instead, the international community has relied on the workings of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and on the Temporary Media Commission²⁵⁶ to control for hate speech²⁵⁷. Confidence-Building Measures (CBMs) have been attempted in Mitrovica between the south and the north (involving mainly the organization of market days, whereby members of both communities are allowed to sell and buy the goods they require) with mixed results and of short duration²⁵⁸.
- X) There has been continuous discrimination against ethnic groups in Kosovo, predominantly against the Kosovo Serbs and Roma with regard to employment opportunities in the private sector. The issue of property has become a major issue of concern, since direct and indirect pressure has been reported to be utilized upon property holders to sell their land/property in order to make a place ethnically clean, be it in north Mitrovica where Albanians have been forced to sell or in the southern enclaves, where Serbs have been forced to sell²⁵⁹. Language rights have not been provided for by all municipalities as required, a lot of municipalities still do not have the

²⁵³ S/2007/134, Annex I, Para. 7.

²⁵⁴ See OSCE, Election 2004.

²⁵⁵ S/2007/134, Annex I, Para.45.

²⁵⁶ Interestingly, of the fourteen complaints made against various media organs in 2002, the Temporary Media Commission (TMC) decided that none had fulfilled the criteria (King & Mason 2002: 130).

²⁵⁷ S/2002/62, Para. 21.

²⁵⁸ S/2001/600, Para. 20.

²⁵⁹ On this ground UNMIK Regulation 2001/17 has attempted to prohibit the sale of property that can be used to detriment the living conditions of a living minority in the area (S/2001/218, paras.8, 46).

interpreters required and names and street shields remain predominantly in Albanian²⁶⁰. Vandalism against Serbian Orthodox churches and monasteries has continued to occur²⁶¹. Discrimination in the employment sector particularly against the minorities and less educated is ‘increasingly apparent’²⁶². Apart from that, occurrence of serious human rights violations mostly based on ethnicity has not subsided under UNMIK and the existence of mono-ethnic Serb and Roma enclaves has continued to exist²⁶³. The discrimination against ethnic groups has been interethnic, as well as intraethnic²⁶⁴.

Thus, it is clear that conflicting ethnic interests not only continue to exist in Kosovo, but have at times also escalated during UN presence, as was the case with the March 2004 violence, five years after the establishment of international peacebuilders on Kosovo’s territory. Based on these ten criteria one can conclude that conflicting ethnic interests are extremely high in Kosovo.

5.4.1 The March 2004 violence

As already pointed out under the third criterion, characterizing conflicting ethnic interests, the results of the March 2004 violence were detrimental not only in terms of statistics, destruction of infrastructure and a high flow of refugees, above all this violence impacted upon the political process and led to the further marginalization of the ethnic minority components from the political process.

The background to the March 2004 violence was described by the Kosovo media as having an ethnic basis, but in reality no such evidence was ever produced and, although UNMIK police officials claimed that there is no evidence that the drowning of the three Albanian boys in the river Ibar was caused by Serbs, the story was misrepresented by the media and that is how the terrible killing and destruction on 17 March 2004 begun²⁶⁵.

²⁶⁰ S/2006/707, Annex I.

²⁶¹ S/2006/707, Para. 21.

²⁶² S/2000/538, Para. 51.

²⁶³ S/2000/177, Paras. 49, 54.

²⁶⁴ S/2000/878, Para. 2 refers to intimidation by hardline Serbs in Kosovo against fellow Serbs willing to participate in the peacebuilding process.

²⁶⁵ The background to the violence is described by King & Mason (2006: 8-9) as a result of the killing of a young Serb, Jovica Ivic, in the all-Serb village of Caglavica near Pristina – this resulted in the

From 17-19 March 2004 severe incidents of ethnic violence occurred in the ethnically divided Mitrovica region of Northern Kosovo; 29 Serbian Orthodox churches and monasteries were destroyed, 800 homes and more than 150 vehicles were damaged, resulting in 19 dead, 1,000 injured and more than 4,000 displaced persons²⁶⁶. A large number of the displaced persons still have not returned to their homes, which in turn have been looted by Albanians, scribbling 'No return for Serbs' signs on the walls²⁶⁷. Ironically, the UN got involved in Kosovo in order to protect the Albanians from the Serbs and ended up protecting the Serbs from the Albanians, thereupon failing to prevent the expulsion of 200,000 Serbs from their homes since 1999 (McGwire 2001: 2) and thus, seriously impairing the prospect for a Serbian-Albanian dialogue.

The impact of the March 2004 violence was detrimental to the peacebuilding process. Internally, there was no coherent stand on behalf of the Albanian leaders on the violence. Kosovo's Prime Minister Bajram Rexhepi actively opposed it, whereas President Rugova refused to condemn the March 2004 violence²⁶⁸. Most of the victims of the March 2004 violence continued to suffer from looting of their homes a month after the end of the riots (King & Mason 2006: 19). Following the March 2004 violence, Kosovo Serb political leaders withdrew their participation from the Assembly and only participated in selected political processes.

Additionally, the March 2004 violence had a detrimental effect on the benchmarks of the international community, such as returns and freedom of movement - it resulted in a 40% decrease of returns in 2004 as compared to 2003 and freedom of movement has remained 'precarious'²⁶⁹. Thus, the March 2004 violence has proven that conflicting ethnic interests impact negatively not only the levels of local

blocking of two important highways by Serbs: the one running to Macedonia and the one running to Gnjilane; moreover on the evening of 16 March 2004, three Kosovo Albanian boys, aged 9, 11 and 12 went missing and were presumed drowned in the river Ibar. The whole story was then broadcast by RTK (Radio Television of Kosova), the public broadcaster, and was described as an incident resulting from 'Serbs chasing the boys', although the sole witness that had survived (Fitim Veselli) had never really claimed that the boys were being chased by Serbs, but only that a few Serbs with a dog 'swore at [them] from a house', the same was reiterated also that evening by an UNMIK police official who claimed in the broadcast that there was no evidence that the crime had been ethnically motivated. However, the public broadcaster misrepresented the event and spurred the outbreak of violence, which later came to be known as the March 2004 violence.

²⁶⁶ UNMIK (2004: 2).

²⁶⁷ S/2005/88, Annex 1, Para. 35.

²⁶⁸ A note made by King and Mason (2006: 18).

²⁶⁹ S/2005/88, Paras. 9, 10, 12.

participation by the population, but also on the benchmarks achieved, being detrimental to UNMIK and the fostering of local ownership.

Finally, the March 2004 violence strained the relationship between Serbia and UNMIK, whereby the National Assembly of the Republic of Serbia adopted a Resolution as a result of the March 2004 violence²⁷⁰, naming the events of 17-19 March 2004 a 'pogrom against the Serb population in Kosovo and Metohija', resulting from the 'lack of readiness on the part of UNMIK and KFOR to exercise their obligations under UN SC Resolution 1244' and viewing the events as a 'direct result of the transfer of competences from the international administration to the provisional institutions in Kosovo'. The resolution further classified the recent violence of Albanians against Serbs in Kosovo as 'ethnic cleansing' and appealed not only to the inalienability of Kosovo and Metohija to Serbia and the state of the State Union of Serbia and Montenegro in 2004, but also called for an increased response to combat international terrorism²⁷¹.

5.4.2 Affirmative action

The policy line that the international community chose with respect to Kosovo was not so much along the lines of truth and reconciliation, but rather along the lines of affirmative action. This study argues that affirmative action quotas as introduced by UNMIK and the Provisional Institutions for Self-Government in Kosovo (PISG) actually did little to bridge the conflicting ethnic interests between Kosovo Serbs and Albanians, entrenching and institutionalizing these divisions even more.

Essentially, the international community wanted to entrench in Kosovo not merely the rule of the majority, as would have been in a proportional representation system, but also have a number of reserved seats for Serbs and minority community members that would offer them many more seats than a mere demographic representation²⁷². Thus, the Constitutional Framework of Kosovo, which foresaw the establishment of the PISG stipulated that the Kosovo Assembly consist of 120 members, elected every three years, whereby 100 seats are distributed in proportion to overall votes and 20 are reserved for non-Albanian members, of which 10 seats are for

²⁷⁰ See *Resolution of the National Assembly of the Republic of Serbia on Kosovo and Metohija*, 26 March 2004.

²⁷¹ *Ibid.*

²⁷² Hysa (2004: 290) has described the Kosovo system as a combination of the proportional system and a 'closed list'.

Serbians and 10 for other minorities, the official languages of the printed documents are to be Serbian and Albanian. In essence, in the 120-member strong Assembly 18% of all seats were attributed to Kosovo Serbs, although they comprise only 6% of the entire population (Narten 2006: 150). Affirmative action quotas were also introduced for the employment of minority communities in the public sector and the Kosovo Police Corps (KPC), equalling to 16,6% and 10% respectively, a number much higher than the actual demographic statistics of the country²⁷³.

Although, the Federal Republic of Yugoslavia (FRY) initially expressed its desire to cooperate with UNMIK in the realm of promoting affirmative action within Kosovo²⁷⁴, (thus pledging to cooperate with UNMIK in the spheres of security, protection and freedom of movement, missing persons, have increased participation of Serbs in the institutions and administrations of Kosovo's local government and ensure that the Kosovo Serb community has access to education in their own language from primary school to university), the policy of FRY and later that of the Republic of Serbia was contradictory. On the one hand, it officially declared its willingness to support the affirmative action policies of UNMIK in Kosovo, on the other hand, it also provided assistance to the parallel government structures in the north of Kosovo and the enclaves, sending mixed signals to Kosovo Serbs as to whether they should participate in the government structures provided by UNMIK and the organized elections.

Thus, the UN policy of affirmative action was oft impeded directly from Belgrade and almost ten years after its establishment it has not been able to take roots in Kosovo politics. Serbia's fear to lose Kosovo was countered by the Kosovo Albanian disillusionment that institutions are taking too long to hand over power and the status question is not really being settled. Kosovo Albanian disillusionment threatened the work of the UNMIK structures and policies as well. For this reason an attempt was made to settle the status question of Kosovo.

5.4.3 From supervised to unilateral independence

The vagueness of UN SCR 1244 provided for no concrete final settlement to Kosovo's status. As the March 2004 violence has demonstrated, the insecurity and uncertainty

²⁷³ For more information refer to the section on demography of this chapter.

²⁷⁴ See *UNMIK – FRY Common Document*, Belgrade, 5 November 2001.

with regard to the future often led to an escalation of ethnic conflict and tensions. That is why on 26 March 2007, the Special Envoy to the SG on Kosovo, Martti Ahtisaari, recommended that Kosovo's future status should be 'independence, supervised by the international community'²⁷⁵. Martti Ahtisaari defined Kosovo's state in March 2007 as a 'state of limbo' and has viewed the 'uncertainty over its future status' as 'a major obstacle to Kosovo's democratic development, accountability, economic recovery and inter-ethnic reconciliation'²⁷⁶. Thus, the Special Envoy to the SG on Kosovo stated that reintegration into Serbia is 'not a viable option' since for the past eight years both regions have been governed separately, eventually leading to a process that is 'irreversible'²⁷⁷. Ahtisaari concluded that continued international administration is not an option if 'the legitimate expectations of the Kosovo people for more ownership in, and responsibility for their own affairs' are to be met, rather independence with international supervision is proposed²⁷⁸.

However, the proposal for a 'supervised independence' of Kosovo by the international community for an initial period of 120 days was rejected by the Republic of Serbia. In reaction to the proposed Ahtisaari Plan the National Assembly of the Republic of Serbia adopted a resolution²⁷⁹, in which the National Assembly reiterated the Preamble to the Constitution of the Republic of Serbia, which states that 'the province of Kosovo-Metohija is an integral part of the territory of Serbia' and that it has a status of substantial autonomy within the sovereign state of Serbia. The National Assembly also reiterated Article 8 of the Constitution of the Republic of Serbia, which states that 'the territory of the Republic of Serbia is inseparable and indivisible' and that 'the border of the Republic of Serbia is inviolable', treating Kosovo and Metohija as an 'integral part of the Republic of Serbia' with the 'status of a substantial autonomy within the sovereign state of Serbia'²⁸⁰. The resolution of the Serbian National Assembly also reaffirmed the Helsinki Final Act of the OSCE, which defends state sovereignty and territorial integrity as foundations of modern international law

²⁷⁵ S/2007/168.

²⁷⁶ Ibid, Para. 4.

²⁷⁷ Ibid, Para. 7.

²⁷⁸ Ibid, Para. 8.

²⁷⁹ See *Resolution Following UN Special Envoy Martti Ahtisaari's 'Comprehensive Proposal for the Kosovo Status Settlement' and Continuation of Negotiations on the Future Status of Kosovo-Metohija*, 2007.

²⁸⁰ See *Constitution of the Republic of Serbia*, 30 September 2006.

and on this basis the National Assembly declared Martti Ahtisaari's proposal as one breaching the fundamental principles of international law.

Serbia's Prime Minister Vojislav Kostunica rejected Ahtisaari's proposal²⁸¹ as 'an unlawful and illegitimate attempt' to dismember the Republic of Serbia and claimed that it was not within the mandate of the Special Envoy to 'violate the principle of sovereignty and territorial integrity and to propose redrawing Serbia's internationally recognized borders', claiming that 'neither the Secretary-General nor the Security Council could have given Mr. Ahtisaari the mandate to open the issue of the state status of Serbia'. Kostunica proclaimed that Serbs and Albanians had been living together for centuries in Kosovo and it was impermissible to conclude and support the thesis of Albanian separatists that 'living together is not possible', instead he stressed the importance of having democratic principles and responsibilities such as living together in a multiethnic society²⁸². Kostunica posed the question as to why more than the 40,000 Serbs expelled from Pristina cannot return to the capital and live there, whilst currently the number of Serbs living in the province capital are 100, claiming that this is clear evidence that the standards set by Resolution 1244 have remained unfulfilled. In conclusion, the Serbian Prime Minister stated that 'you can rest assured that Serbian people will never permit its state to be dismembered, nor could it ever recognize the existence of another independent state on its sovereign territory'²⁸³.

In March 2007 the Serbian President Boris Tadic addressed the international community members at a Meeting on the Comprehensive Proposal for the Kosovo Settlement in Vienna, and thereby stated that Serbia has offered Kosovo and Metohija a very 'broad, substantial autonomy that would be internationally guaranteed'²⁸⁴. According to the proposed substantial autonomy Serbia would retain only a small number of competencies in foreign policy, defence, the protection of religious and cultural heritage, arguing at the same time that the economic links between Kosovo and Serbia were to be renewed to the mutual benefit of all parties and reaffirmed that

²⁸¹ See *Address by Prime Minister of Serbia Vojislav Kostunica to the UN Security Council*, New York, 3 April 2007.

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ See *Statement by the President of the Republic of Serbia H.E. Boris Tadic at the Meeting on the Comprehensive Proposal for the Kosovo Settlement*, Vienna, 10 March 2007.

the territorial integrity and sovereignty of Serbia cannot be compromised²⁸⁵. Similarly, in a statement by Serbian Foreign Minister Vuk Draskovic at the Human Rights Council in Geneva in 2007, he replied to the proposal of Martti Ahtisaari for 'supervised independence' of Kosovo and underlined the idea that the territorial integrity of the Republic of Serbia needs to be respected, as well as the human rights of the Serbian people and their historical, religious and cultural sites in Kosovo²⁸⁶. The official position of the Republic of Serbia on the status of Kosovo has not changed substantially. It remained the same with regard to the unilateral declaration of independence of Kosovo as well.

5.4.3.1 Declaration of independence

Since the *Ahtisaari Plan* on supervised independence of Kosovo was not accepted by Serbia and Belgrade and frustration levels at the inability to take governance in their own hands was rising among Kosovo Albanians, on 17 February the Kosovo Assembly held a session during which it adopted a *Declaration of Independence*, declaring Kosovo an independent and sovereign state²⁸⁷, pledging to adhere to UNSCR 1244 and to promote equal opportunities for all inhabitants²⁸⁸. As a reaction to Kosovo's independence, on 18 February 2008 Serbian President Boris Tadic stated that Serbia viewed the *Declaration of Independence* by Kosovo as a 'forceful and unilateral secession of a part of the territory of Serbia' that does not produce any legal effect on Serbia or on the international order²⁸⁹. The *Declaration of Independence* on behalf of the Kosovo Assembly represented the birth of the Republic of Kosovo, the youngest state on the European continent.

When discussing the unilateral independence of Kosovo it is important to note that the Serbian position has not changed. On 19 February 2008 the Ministry of Foreign Affairs of the Republic of Serbia presented protest notes to the governments of France, Britain, Costa Rica, Australia and Albania as a protest to the first countries to

²⁸⁵ Ibid.

²⁸⁶ See *Statement Made by the Foreign Minister Vuk Draskovic at the Human Rights Council*, Geneva, 12 March 2007.

²⁸⁷ Interestingly enough even before the actual act of declaring unilateral independence, the Serbian government adopted a *Decision on the Annulment of the Illegitimate Acts of the Provisional Institutions of Self-Government in Kosovo and Metohija on Their Declaration of Unilateral Independence*, dated 14 February 2008.

²⁸⁸ S/2008/211, Para. 3.

²⁸⁹ Ibid, Para. 6.

recognize the unilateral independence of Kosovo²⁹⁰. Serbia's official position on Kosovo has also been reiterated by the newly-elected pro-European Serbian government, whereby the current Prime Minister, Mirko Cvetkovic, has declared that the 'Serbian government will never recognize Kosovo's independence' and 'will take legal, political and diplomatic measures to preserve Serbia's territorial unity'²⁹¹.

The tacit recognition of Kosovo's unilateral *Declaration of Independence* has been seen in the proposed transfer of power from UNMIK to EULEX (the European Union Rule of Law Mission in Kosovo). The Serbian position is that it will not accept such a mission in Kosovo without a UN Security Council resolution. Thus, Serbia's Foreign Minister Vuk Jeremic has written to the UN Secretary-General, Ban Ki-moon, to explicitly state that Serbia 'has never granted its approval for the deployment of an EULEX mission to Kosovo and Metohija, and that officially Belgrade objected to any powers being transferred away from UNMIK to EULEX'²⁹². The Serbian Minister for Kosovo and Metohija, Goran Bogdanovic, has stated that 'Serbia will never recognize Kosovo's independence, nor the presence of EULEX without prior UN Security Council approval'²⁹³.

Finally, one of the latest acts on behalf of the Republic of Serbia to target the unilateral Declaration of Independence of Kosovo has been the draft resolution by Serbian Foreign Minister Vuk Jeremic submitted to the UN General Assembly on 15 August 2008, calling for the opinion of the International Court of Justice on Kosovo's act of unilateral independence (Jovanovic 2008).

Despite the act of unilateral independence on behalf of Kosovo's Assembly, the International Crisis Group (ICG Report 47 2008) restates that Serbs are being encouraged to remain in Kosovo and Belgrade has promised to do whatever it takes to keep them under Serbian authority. Moreover, the three municipalities of Zubin Potok, Zvecan and Leposavic have, together with the Northern part of Mitrovica, kept themselves apart from Pristina for nine years and have refused budget allocations from Pristina, linking the infrastructure to Serbia, and the report assumes that unless there is a change of policy from Belgrade, these municipalities will continue to operate as part of Serbia and refuse cooperation with EULEX, EUSR (the European Union Special

²⁹⁰ See *Serbia's Ministry of Foreign Affairs Presents Notes to Countries that Recognized Kosovo and Metohija*, 19 February 2008.

²⁹¹ See *Serbian Government Will Never Recognize Kosovo Independence*, 9 July 2008.

²⁹² See *Serbian Foreign Minister Writes to UN Secretary-General*, 29 February 2008.

²⁹³ See *Serbia Will Not Accept EULEX without UN Security Council Approval*, 23 August 2008.

Representative for Kosovo) and the International Civilian Office (ICO)²⁹⁴. The dilemma of the local Serbs in Kosovo is that they can only continue to strive for greater autonomy within Kosovo, but they cannot call for independence or separation, for if Belgrade were to recognize these areas as independent, it would mean that Belgrade has also officially recognized Kosovo's independence.

5.4.4 Summary

This study argues that the conflicting ethnic interests present in Kosovo have obstructed the devolution of international structures and institutions to the Kosovo people. Moreover, the existence of conflicting ethnic interests has impacted negatively on the participation of all segments of society equally in the transitional structures promoted by UNMIK. Thus, conflicting ethnic interests in Kosovo have limited local participation and have also had a negative impact on the *Standards before Status* and *Standards for Kosovo* policies and benchmarks set due to the existing animosity between ethnic groups, reducing *SLOP* in Kosovo.

According to the International Commission on the Balkans (2005: 19) 'a multi-ethnic Kosovo does not exist except in the bureaucratic assessments of the international community', thus avidly differentiating between what has been achieved in practice in terms of multi-ethnicity and cohabitation/ co-existence and what the international community prescribes as progress in terms of the constructed and socially engineered institutions that, however, do not have a soul, but merely a structure.

The UN has identified as one of the major challenges confronting UNMIK the political engagement of Kosovo Serbs, since FRY has branded the Constitutional Framework of Kosovo as 'unacceptable', which has led to a diminished role of both the Serb National Council-Gracanica (SNC-G) and the Serb National Council-Mitrovica and their participation in the Joint Interim Administrative Structure (JIAS)²⁹⁵. Instead, the self-styled in February 2001 proclaimed 'Political Committee for the Defence of Kosovska Mitrovica' has gained influence with radical Serbs seizing on the issue of UNMIK tax collection points²⁹⁶.

In essence, this section has demonstrated that conflicting ethnic interests have been paramount in Kosovo. The persistence of such interests, however, can be clearly

²⁹⁴ ICG Report Nr. 47, 2008.

²⁹⁵ S/2001/565, Para. 5.

²⁹⁶ Ibid.

attributed also to the position of Serbia and the lack of meaningful dialogue with Pristina. The lack of support for a functioning UNMIK both on behalf of the Kosovo Serb leaders and Albanian leaders has blocked also the achievement of sufficient levels of local participation from all segments of society in Kosovo.

5.5 Local participation

In effect, the transfer of the transitional institutions to the Kosovo population and the general will of the local population to participate in the transitional government institutions created by UNMIK were influenced not only by the presence of conflicting ethnic interests in the region, but also by the question of Kosovo's final status.

5.5.1 Degree and pace of devolution of institutions

The UN foresaw the establishment of an international civil presence in Kosovo to provide an interim administration for the people of Kosovo and which will provide the people of Kosovo with 'substantial autonomy'²⁹⁷. The interim administration in Kosovo was to establish and oversee the 'development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo'²⁹⁸. Thus, UNMIK foresaw the establishment of democratic institutions for self-government to enable a peaceful coexistence of all inhabitants.

5.5.1.1 The question of Kosovo's final status

The mandate establishing UNMIK identified four phases for the gradual transfer of power from the international peacebuilders to the local population in Kosovo. These phases were identified in UN SCR 1244 as 1) exclusive international rule, 2) establishment of Provisional Institutions for Self-Government (PISG), acting since 2001 and the organization of elections²⁹⁹, 3) transfer of responsibility to the PISG with final control remaining with the UN and 4) determination of the final status of

²⁹⁷ S/RES/1244, Para. 10.

²⁹⁸ Ibid.

²⁹⁹ The first municipal elections in Kosovo were held on 28 October 2000, witnessing the devolution of power from the UN to local politicians; the first Assembly elections were held on 17 November 2001; on 4 March 2002 Rexhepi became the first Prime Minister of the province and Rugova the first President (Smyrek 2006: 197-8).

Kosovo³⁰⁰. Thus, phase four stipulated that the actual and complete self-government of Kosovo were to be achieved only after the status question were decided upon.

Phase four of Kosovo's state of devolution does not seem to have been surpassed, even though Kosovo has declared unilateral independence for the amount of countries that have recognized the Republic of Kosovo has not expanded significantly and has not led to membership in important international organizations, such as the UN. Phase four has also been the phase that has seemed to last forever due to the lack of a compromise on Kosovo's status between the Kosovo Albanians and the Republic of Serbia. According to a survey by the National Democratic Institute in Kosovo (NDI) in January/ February 2007³⁰¹ the Albanians in Kosovo viewed status as the 'obstacle to all progress', whereas the Serb participants claimed that 'Kosovo is Serbia' and status change will 'provoke exodus'.

Knoll (2005) has also emphasized that the uncertainty with regards to the future status of Kosovo was a crucial factor that undermined the achievement of local ownership for it is impossible to own something that one cannot imagine and comprehend what it is beforehand.

In vain politicians tried to broker a deal between Kosovo Albanians and Serbs. Ironically, the question of Kosovo's final status is concretely dealt with by the reference of UN SCR 1244 to the Rambouillet Accords³⁰² which is seen as a major setback. The status deadlock has been witnessed in the news coverage 'Serbia [is] willing to give everything but independence, while the majority of ethnic Albanians want nothing but independence'³⁰³. The matter seems to have been further complicated by the fact that the Contact Group (Britain, France, Italy, Germany, Russia and the US) who have been participating in the talks about a final status on Kosovo have been themselves divided; Russia has been supporting Serbia, whereas the United States and Great Britain have been backing Pristina (Kosovareport, 2006). Thus, the talks with different parties on Kosovo's final status has not led to any progress and, as already specified, this prompted the Kosovo Assembly to adopt the *Unilateral Declaration of*

³⁰⁰ Søbberg (2006: 66) describes how in a fifth phase after the status of Kosovo has finally been resolved, the provisional institutions and overall administration of Kosovo will be transferred to a permanent civil administration directed and controlled by the local population of Kosovo.

³⁰¹ See National Democratic Institute in Kosovo (NDI), 'Insights into Public Opinion', Annual Qualitative Research Report, January/ February 2007.

³⁰² The Rambouillet Accords have not really been signed or agreed upon neither by the Serbian side, nor by the Albanian, for more information see Smyrek (2006: 192).

³⁰³ BBC News, 2006.

Independence on 17 February 2008. However, despite independence, UNMIK has continued to exercise authority in Kosovo and devolve institutions, for local ownership in the sense of sustainable local governance (commitment to and exercise of liberal self-government) has not been achieved yet.

As already mentioned in the previous section, on 15 August 2008 Belgrade submitted a draft resolution to the UN, requesting the opinion of the ICJ on the 'legality' of Kosovo's unilateral independence (Jovanovic 2008). Thus, the question of Kosovo's final status seems to be going on and this question, which has mirrored the conflicting ethnic interests within the province, has also jeopardized a meaningful participation and devolution of the established institutions for self-government in Kosovo. In the following sections, attention will be devoted to the most important transitional bodies and to the pace and degree of participation on behalf of the local population therein.

5.5.1.2 Kosovo Transitional Council

The first joint institutional structure to be created in Kosovo was the Kosovo Transitional Council (KTC) in 1999. The KTC was constructed to bring together all major political parties and ethnic groups and offer a forum for political discussions, it acted as a precursor to the Kosovo Assembly³⁰⁴. The KTC constituted the highest consultative body of the Joint Interim Administrative Structures (which came into effect a few months later)³⁰⁵. KTC was composed of 36 Members from the main political parties, the International Administrative Council members, religious community leaders, representatives of national communities and representatives of civil society³⁰⁶.

5.5.1.3 Joint Interim Administrative Structure

The Joint Interim Administrative Structure (JIAS) and the Interim Administrative Council (IAC) 'Kosovarized' the central administrative departments and the municipalities by establishing a double-desk structure of international and local co-heads³⁰⁷. The JIAS came into effect in February 2000 and hoped to involve the local

³⁰⁴ UNMIK/REG/2000/1.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

population in the provisional administration, which consisted of 20 administrative departments, co-headed by international and local members; the JIAS was established 1) to provide interim management with UNMIK, whereby the SRSG retained legislative and executive authority, 2) to integrate all parallel structures in Kosovo, 3) to conform with the applicable law in Kosovo 4) to involve all communities in the provisional administrative management³⁰⁸. The Interim Administrative Council (IAC) was established together with JIAS and was the highest Executive Board to JIAS, it made recommendations to SRSG to amend applicable laws and frame new ones, to propose policy guidelines for JIAS³⁰⁹. IAC was composed of eight Members: three Kosovo Albanians and one Serb, plus four UNMIK members.

The 15 December 1999 Agreement, which established the JIAS and IAC also provided for the demilitarization of the Kosovo Liberation Army (KLA) and its transformation into a civil force, thus the Kosovo Protection Corps (KPC) was established and came into effect on 31 January 2000³¹⁰. As a reaction to the foreseen establishment of the KPC, a Serb National Council (SNC) was created by Bishop Artemije and Mr. Trajković who withdrew from the KTC, claiming that the newly-created KPC was the 'KLA in disguise'³¹¹ and thus, impacted upon the neutrality of the protection corps, since KLA was the organ responsible for ethnic killings and attacks upon Kosovo Serbs.

Thus, the participation of all segments of society in the first transitional institutions in Kosovo and the pace of devolution were with mixed results and slow to instil virtual self-government.

5.5.1.4 Provisional Institutions for Self-Government

With the passing of the Constitutional Framework Agreement in May 2001, JIAS and IAC were replaced by the Provisional Institutions for Self-Government (PISG). The PISG were promulgated on 15 May 2001³¹². PISG were consistent with UN SCR 1244 and were to respect the rule of law, protect human rights, and respect democratic principles, reconciliation and the separation of powers, however, specific powers

³⁰⁸ Established under UNMIK Regulation 2000/1 of 14 January 2000, based on the 15 December Agreement between Hashim Thaçi, Ibrahim Rugova and Rexhep Qosja (who were also present at the Rambouillet talks).

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ S/1999/1250, Para.3.

³¹² UNMIK/REG/2001/9.

remained reserved for the SR SG³¹³ (a detailed description is provided in the next section of the exact powers reserved for UNMIK).

According to the Constitutional Framework, there were four main provisional institutions: the Assembly (consisting of 120 members, elected every three years, whereby 100 seats were distributed in proportion to overall votes and 20 were reserved for non-Albanian members, of which 10 seats for Serbs and 10 for other minorities, the official languages of the printed documents were to be Serbian and Albanian), the President (guarantor of the PISG and responsible for taking external action, was to be elected by the Assembly), the Government (was responsible for the implementation of laws), and the courts (consisted of a four-level judicial system, including Supreme Court of Kosovo, district courts, municipal courts, minor offence courts; judges and prosecutors were appointed by the SR SG).

The following table indicates how local and national leaders perceived the PISG in Kosovo.

Table 2: Local and national perceptions of the PISG in Kosovo.

Views	Perceptions of PISG
Belgrade	These institutions are 'weak' and do not implement 'human rights standards', they lack the capacity for performing adequately in all fields of political, economic and social life; Serb property is being 'usurped', there is no multiethnic society being built in Kosovo and Metohija (<i>Technical Assessment of Implementation Standards for Kosovo 2007: 1, 6, 7</i>).
Kosovo Assembly Albanian leaders	Viewed the Institutions as successful, however pleaded for an extension of their authority and a limitation of the SR's powers (S/2002/1376, para.24).
Kosovo Assembly Serb Participants	Challenged the institutions as being unable to create freedom of movement and to counter insufficient returns and destruction of churches (S/2002/1376, Para. 25).

Sources: S/2002/1376 and *Technical Assessment of Implementation Standards for Kosovo*,
compilation: D.C.S.

Apart from the four main bodies created under the Constitutional Framework for Kosovo, there were also several independent bodies, such as the Ombudsperson established. A plaguing problem of the functioning of the PISG had been the existence of parallel structures within the Serb enclaves in Kosovo and their direct support from Belgrade³¹⁴. On the other hand, the few Serb participants within the Kosovo Assembly abstained from participating in the Assembly plenary meetings since their minority

³¹³ Ibid.

³¹⁴ The limited participation of minority communities within the municipal structures remains a 'matter of concern' (S/2000/538, Para. 17).

proposals were constantly outvoted by the majority; rather they limited their activity to the work of boards and committees³¹⁵.

5.5.1.5 Independent institutions for self-government

The PISG continued to be in force until the *Constitution of the Republic of Kosovo* came into effect on 15 June 2008, following the *Declaration of Independence* on 17 February 2008. The Constitution of the Republic of Kosovo foresaw the new state as a multiethnic state, organized around the principles of decentralization (basic territorial unit being the municipality) and equal protection of the human rights of all inhabitants of Kosovo³¹⁶.

The *Constitution of the Republic of Kosovo* foresees that the Assembly of the Republic of Kosovo consists further of 120 seats with a guarantee of 20 seats for non-Albanian minorities³¹⁷. These 20 seats, however, will only be used if the minimum requirement for non-Albanian quotas has not been filled³¹⁸. Thus, if under PISG Kosovo Serbs were entitled to ten seats in addition to the seats won by them in the general election, the *Constitution of the Republic of Kosovo* foresees the minimum number of Seats for Kosovo Serbs as ten; however, the seats adjudicated to the Kosovo Serbs will depend above all on the election process. In other words, in contrast to the previous provision by the PISG, whereby only 100 seats of the Kosovo Assembly were to be directly elected, the current Constitution provides that all 120 seats of the Kosovo Assembly will be directly elected and in those cases where the minority quota remains unfulfilled (for example only seven Kosovo Serbs are elected as members of the Kosovo Assembly, then, another three positions will be adjudicated to the community in order to fulfil the minimum requirement of 10 Kosovo Serb representatives in the Assembly)³¹⁹. The Constitution, thus, foresees that the Kosovo Serbs have a minimum of ten seats in the Assembly, with a minimum of one seat for the Ashkali, Egyptian,

³¹⁵ S/2007/256, Para. 32.

³¹⁶ The Preamble to the Constitution sees the future of Kosovo as that of a 'free, democratic and peace-loving country that will be a homeland to all of its citizens'. Art. 1 enshrines the Republic of Kosovo as an 'independent, sovereign, democratic, unique and indivisible state' which shall have 'no territorial claims against, and shall seek no union with, any State or part of any State'. Article 2 stipulates that Kosovo is a 'multiethnic society' that is governed democratically and is based upon the principles of equality of all individuals before the law. Article 5 proclaims Albanian and Serbian as the official languages of the State and Art. 12 underlines that municipalities are the 'basic territorial unit for self-governance' in the Republic of Kosovo.

³¹⁷ *Constitution of the Republic of Kosovo*, Art. 64.

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

Roma, and Gorani communities with one additional seat awarded to either the Ashkali, Egyptian or Roma communities that has the highest overall votes, three seats for the Bosnian community and two seats for the Turkish community³²⁰. Nevertheless, there is a transitional clause inserted in the Constitution, which stipulates that for the first two mandates the Kosovo Assembly shall add all elected seats for the non-Albanian minorities to the total foreseen quota of twenty seats, in other words, only 100 seats will be directly elected, after this transition period of two mandates, the total number of seats for general election will rise to 120³²¹.

The Constitution further provides for a Head of State, the President of the Republic of Kosovo to be elected by the Kosovo Assembly³²². The Constitution foresees the establishment of a Government of Kosovo to consist of the Prime Minister, his deputy and ministers to be proposed by the President of the Republic of Kosovo³²³. The President of the Republic is also to serve as a Commander-of-Chief to the newly proposed Kosovo Security Force (KSF), which shall be the national security force³²⁴. Apart from that a Kosovo Police (KP) is foreseen, as well as a Kosovo Intelligence Agency (KIA)³²⁵.

5.5.1.6 Powers reserved for UNMIK

Although the PISG foresaw autonomy in a large sphere of functions, the following functions remained reserved for the SR SG: control of the protection of minorities, dissolving the Assembly and calling new elections, monetary policy, final authority in Kosovo's consolidated budget and the economic and fiscal council and control over UNMIK Customs Service, final authority over the appointment and removal from office of judges and prosecutors, authority over law enforcement institutions, KPC, concluding international agreements within the scope of UNSCR 1244, amending the Constitutional Framework, and exercising border control responsibilities together with KFOR³²⁶.

Yet, despite the fact that currently Kosovo is an independent republic and the Constitution of the Republic stipulates the establishment of governing structures and

³²⁰ Ibid.

³²¹ Ibid, Art. 148.

³²² Ibid, Arts. 83 and 86.

³²³ Ibid, Arts. 92 and 95.

³²⁴ Ibid, Art. 126.

³²⁵ Ibid, Arts. 128 and 129.

³²⁶ Ibid.

organs, there are still powers and responsibilities reserved for the international community. Thus, the *Constitution of the Republic of Kosovo* refers to UN SCR 1244 and the *Comprehensive Proposal for the Kosovo Status Settlement* dated 26 March 2007 as still being in force³²⁷. Under the *Comprehensive Proposal for the Kosovo Status Settlement* the International Civilian Representative, ICR, (Annex IX, Article 2) still remains the final authority in Kosovo regarding the interpretation of the civilian aspects of the settlement, the ICR also retains the power to appoint directly or provide consent for the appointment of the Auditor-General, the Board of Directors of the Kosovo Pension Saving Trust (KPST), international judges and prosecutors, the Director-General of the Customs Service, the Director of Tax Administration, the Director of the Treasury and the Managing Director of the Central Banking Authority³²⁸.

Thus, once again the power in Kosovo has not been devolved completely, which means that genuine local ownership and complete takeover of the governing structures by the local population has not been achieved.

5.5.1.7 EULEX

Moreover, in addition to the UN TA in Kosovo, there is also a European Rule of Law Mission in Kosovo³²⁹ (EULEX KOSOVO), which was established on 16 February 2008 by a *Council Joint Action* adopted on 4 February 2008. EULEX KOSOVO monitors, mentors and advises the Kosovo institutions in the spheres of rule of law promotion (police, judiciary, customs and correctional services)³³⁰.

The Head of EULEX, Yves de Kermabon, has reiterated the importance of local ownership and local self-governance: 'the key concept is local ownership and accountability: the Kosovo authorities will be in the driver's seat'³³¹.

Still in its preparation and expected to officially take over power in Autumn 2008, EULEX has been quoted as consisting of three pillars: police, justice and customs and it is launched under the European Security and Defence Policy (ESDP). It

³²⁷ Ibid, Art. 143.

³²⁸ *Comprehensive Proposal for the Kosovo Status Settlement*, S/2007/168, Annex IX, Article 2.2.

³²⁹ This mission is to work on a local ownership principle together with the local authorities and will have an EU Special Representative (Council Joint Action 2008, Preamble).

³³⁰ EULEX KOSOVO is seen as a means of promoting the European Security and Defence Policy (ESDP) and thus as a unified ESDP mission (Council Joint Action 2008, Preamble). The main tasks of the mission are described as monitoring, mentoring and advising, while retaining certain executive responsibilities (Council Joint Action 2008, Art. 2).

³³¹ Available at <http://www.eulex-kosovo.eu>

is specified that the mission is a technical exercise without ruling or governing functions with a final staff target of approximately 3,000 staff, of which 1,900 international and 1,100 local. The aim of EULEX is ‘to assist the Kosovo authorities, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability’³³². The aims are stipulated in multi-ethnic terms: to develop and strengthen a multi-ethnic police and justice system by adhering to internationally recognized standards and European best practices³³³.

On 18 August 2008 UNMIK and EULEX signed a memorandum for the transfer of power and authorities from the former to the latter mission. This technical agreement is to provide EULEX with property, office space, vehicles, and above all authority, the treaty was signed following Ban Ki-moon’s approval for the downscaling of UNMIK and the handing over of powers (Hawley 2008). However, this agreement has been also met with resistance on behalf of the Republic of Serbia and the Kosovo Serbs, who insist that their partner will remain UNMIK since this is the mission that was approved via a UN SCR. Moreover, Serbs in northern Kosovo have been rallying to protest the establishment of more solid borders between Kosovo and the Republic of Serbia and the handing over of power to EULEX, which has been dubbed as ‘illegal and unlawful’³³⁴.

Thus, whether EULEX will be successful to achieve a multi-ethnic Republic of Kosovo with genuine local ownership of the self-government process by the Kosovo Albanians and minority communities remains to be seen. As already stated, any act on behalf of the international community to bypass UN SCR 1244, establishing UNMIK, has been deemed illegitimate by the Kosovo Serbs and the Republic of Serbia, since it undermines the territorial integrity of the Republic of Serbia. Thus, unlike UNMIK, which has witnessed mixed support from Belgrade and the Kosovo Serbs, EULEX has managed to ostracize itself from the start from the Republic of Serbia and the Kosovo Serbs.

5.5.2 Election turnout, general will and representativeness

The election turnout has been relatively low in Kosovo. Minority participation in all general and municipal election has been limited, as already pointed out in the previous

³³² Ibid.

³³³ Ibid.

³³⁴ See *Kosovo Serbs Hold Protest Rally in North*, 25 August 2008.

section, and this has also been due to the mixed signals sent on behalf of Belgrade and Serbia proper as to whether the Kosovo Serbs should engage in the peacebuilding process or not. Thus, election participation and the will of the minorities to participate in the peacebuilding process and transitional institutions has been minimal, pointing decidedly to institutions that have not been representative. The inability of UNMIK to achieve its minority employment quotas set for the public service sector and Kosovo Protection Corps (KPC) has undoubtedly proven the lack of representativeness of the transitional institutions. However, low election turnout has also been witnessed in the Kosovo Albanian segments of society. Thus, in contrast to 2001, when election turnout was 64%, in 2002 and 2004 only 54% of the predominantly Kosovo Albanians voted for the Kosovo Assembly with the trend declining, for in 2007 election turnout was a mere 43%³³⁵. If the uncertainty of the Kosovo Serbs to participate in the transitional institutions was due to their continued loyalty to Belgrade and fear that a quick achievement of all the benchmarks set will lead to a final status solution, then Kosovo Albanians in part withdrew their participation from the transitional institutions and elections due to the frustration that the political process is being too slow and due to the insecurity and fear that the final status of Kosovo will never really be resolved. This disillusionment was also mirrored in the March 2004 violence. Uncertainty and fatigue, thus, have been omnipresent in UNMIK. Subsequently, Kai Eide has been right in observing that UNMIK did little to overcome the initial conflict in Kosovo and instead embedded ethnic identity in the new political structures³³⁶. Failure of UNMIK to transform the existing conflicting ethnic interests and to foster a representative political process with high levels of general participation can also be attributed to the obstruction that neighbouring countries (Republic of Serbia) have accorded the Serb minority in Kosovo.

5.5.3 Obstruction from neighbouring/other countries to local participation

The dialogue and cooperation between Belgrade and UNMIK has often been described as 'variable'³³⁷. The dialogue between Belgrade, Pristina and UNMIK has been

³³⁵ S/2004/907, Annex I, Paras. 2 & 6, S/2007/768, Para. 3, OSCE Mission in Kosovo, Certified Results, Elections 2002.

³³⁶ S/2005/635.

³³⁷ S/2001/565, Para. 57.

variable with regard to local participation and incentives on behalf of Belgrade for the local Kosovo Serbs to be involved in the political process of Kosovo and participate. The dialogue, or lack thereof, has proven to be a dead end with regard to a resolution on Kosovo's final status. This section thus, concentrates on the incentives provided from Belgrade to ensure participation in the local structures.

Indeed, local participation in the political process has been dependent on the supportive role of local politicians and leaders. In the Kosovo case, the impulses and signs sent by local leaders have been often contradictory. Thus, in 2004 Serbs received mixed signals from Belgrade whether to participate in the elections or not – on the one hand the Serbian Prime Minister Vojislav Kostunica and the Serbian Patriarch Kyr Pavle maintained that the conditions were not in place 'for Kosovo Serbs to vote and urged Kosovo Serbs not to go to the polls'³³⁸. On the other hand, on 5 October 2004 the Serbian President Boris Tadic stated that he would support Kosovo Serb participation in the elections to be held on 23 October 2004 and as a result a Serbian List for Kosovo and Metohija, consisting of 33 candidates was submitted, which however, resulted in the negligible participation of only 1% of the Serb population in Kosovo (around 2,000) – a setback from the 2001 Kosovo-wide elections when the Kosovo Serb coalition was the third largest entity in the Assembly with 22 seats, of which 12 were directly elected³³⁹. Similarly, in 2006 the Belgrade Government's Coordination Centre for Kosovo insisted that Serb members of the PISG who have until been on a double payroll from Kosovo and Belgrade choose between the two positions and this has led to approximately 70% of the members leaving the PISG³⁴⁰. Thus, Belgrade has been openly supporting the operation of parallel governing structures in Kosovo, undermining the working of UNMIK.

Subsequently, local participation of all segments of society (all stakeholders) in Kosovo has had mixed results. In 2007 'general engagement of the Kosovo Serb community in and with the Provisional Institutions at both central and local level' remained 'very limited'³⁴¹.

³³⁸ S/2004/907, Annex I.

³³⁹ Ibid.

³⁴⁰ S/2006/361, Annex I, Para. 8

³⁴¹ S/2007/134, Para.7.

5.5.4 Summary

Underlying, this mixed participation observed in Kosovo have been several factors: the conflicting ethnic interests persistent in the province, leading to both frustration on behalf of the Kosovo Albanians and fear on behalf of the Kosovo Serbs, and to a dead end with regard to an agreement on the final status question of Kosovo. On the other hand, local participation has been stifled by the ambitious UN mandate and all the standards and phases to be achieved before a decision on the final status and local self-government can be reached. The following table illustrates the degree and pace of local participation in the transitional institutional structures in Kosovo.

Table 3: Local participation in Kosovo

Local participation	Kosovo (1999 - August 2008)
High degree of devolution of institutions to local actors	-
High pace of devolution	-
High election turnout (above 70%)	-
High general will of the population to participate	-
Representative institutions (all stakeholders participate)	-
No obstruction from neighbouring countries	-

Sources: Reports of the UN SG on UNMIK³⁴², author D.C.S.

Examining the table constructed with regard to local participation in Kosovo, one can conclude that local participation in the Kosovo peacebuilding process has been low. This participation has been depicted as low and insufficient not only by the observations of the current study, but also by authors that have dealt with the Kosovo peacebuilding theme. For example, Narten (2006: 156) criticizes the UNMIK policy in Kosovo, as well as the policies of the PISG, by claiming that a ‘culture of democracy and socio-political responsibility is still lacking’ in Kosovo and needs to be addressed. Thus, Narten (2006: 159) argues that ‘building democratic institutions seems to depend not only on their formal institutionalization, but also on fostering self-awareness and responsibility among local institutions of self-government’ and recommends an increase in ‘participatory approaches’ to building local institutions, which should not be a ‘substitute for top-down decision-making by international missions’, but should rather be complementary to them. As the Special Envoy to the UN SG, Kai Eide, noted ‘the recruitment of minorities has too often been seen as a question of filling a quota

³⁴² S/2002/432, S/2002/436, S/2002/779, S/2002/1126, S/2003/113, S/2003/421, S/2003/675, S/2003/996, S/2004/71, S/2004/348, S/2004/613, S/2004/907, S/2005/88, S/2005/335, S/2005/635, S/2006/45, S/2006/361, S/2006/707, S/2006/906, S/2007/134, S/2007/168, S/2007/395, S/2007/582, S/2007/768, S/2008/211, S/2008/354, S/2008/458.

rather than one of providing meaningful participation³⁴³. Eide has claimed that the parallel health and education structures in the Serb-populated areas are financed by the Serbian government and represent the ‘mistrust’ between the two communities³⁴⁴.

As already stated, the low level of local participation witnessed in Kosovo has also been determined by the lack of mandate clarity of the mission, as well as the overtly ambitious standards formulated for the province before a final status can be decided upon.

5.6 Benchmarks achieved

The benchmarks in Kosovo have been laid down in numerous documents. The most important document remains UN SCR 1244, which laid down the mandate specifics for UNMIK and simultaneously prevented the province from achieving independence due to the inherent contradictions of UN SCR 1244 (1999).

5.6.1 Mandate clarity

Right from the start the mandate of UNMIK provided vague and contradictory principles. On the one hand, it reaffirmed ‘the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other states of the region, as set out in the Helsinki Final Act and Annex 2’, and on the other hand, it called for a ‘substantial autonomy and meaningful self-administration of Kosovo’³⁴⁵. Reportedly the first Special Representative to the Secretary General (SR SG) Bernhard Kouchner read UN SCR 1244 twice every morning and still had no idea what ‘substantial autonomy’ meant (Chesterman 2007). This vague wording of the devised mandate, establishing UNMIK under UN Security Council Resolution 1244 of 10 June 1999 was to translate later into rising uncertainties as to what type of institutions are to be constructed in Kosovo and what type of end status for the province were to be pursued. Thus, the lack of a clear mandate translated into contradictory principles and vague objectives.

Amongst other functions UN SCR 1244 (annex 2) defined the responsibilities of the international civil presence as:

³⁴³ S/2005/635, Para. 22.

³⁴⁴ Ibid, Para. 23.

³⁴⁵ S/RES/1244, Preamble.

- to establish ‘substantial autonomy and self-government’ in Kosovo, taking into account the Rambouillet Accords (bearing in mind that the Rambouillet Accords were never signed by both parties to the conflict, to phrase the final settlement clause so vague basically implied that it was unsure, when (if at all), such a final settlement would be reached);

- to organize the development of democratic institutions for autonomous self-government, pending a political settlement (once again reference is being made here to a political settlement, thus, it remains unclear what type of institutions are to be created – federal institutions for an independent republic, or municipal ones for decentralization within Serbia);

- to transfer responsibilities to Kosovo’s local provisional institutions;

- to facilitate a political process to determine Kosovo’s future status in accordance with the Rambouillet Accords (once again it remains unclear how the Rambouillet stalemate is to be bridged, since no provision is made for an expression of the will of the people or a conduct of plebiscite);

- to establish local police forces;

- to protect and promote human rights;

- to assure the safe return of all refugees and displaced persons to their homes in Kosovo.

The mandate of UNMIK in Kosovo aimed to promote substantial autonomy and self-government via the development of local democratic institutions. However, the lack of specification of a final settlement led to a change in the local perceptions of peacebuilders over time – from liberators to potential occupiers (Narten 2007: 23). The Kosovo final status question has been dubbed by authors as a ‘constitutional limbo’ (Glenny 2004: 1).

Thus, even though UN SCR 1244 envisioned a settlement for Kosovo’s future status, it was not sure what kind of a settlement that would be – would it really be independence or would it denote reintegration into Serbia. Scholars have mentioned the possibility of Kosovo becoming the next Cyprus, where UN presence has existed for 32 years now, partitioning the North from the South; another possibility would be to witness a ‘Taiwan scenario’ that focuses on internal development rather than independence (Chesterman 2001b: 9).

The lack of a clear final settlement resulted in a deadlock and the local population felt discouraged and frustrated. Many authors ascribe the March 2004 violence and the declining local participation and cooperation with UNMIK on behalf of the Kosovar Albanians to a lack of final settlement³⁴⁶.

According to Regulation 1999/1 of 25 July 1999 ‘all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG’, thus, UNMIK represented the highest legislative and executive authority within Kosovo.

5.6.2 Standards before Status

When it comes to benchmarks achieved: two UNMIK policies are important – the *Standards before Status* policy and the *Standards for Kosovo*, both of these standards referred to benchmarks to be achieved by PISG, however, the former envisaged the attainment of the standards before a final settlement could be reached, whereas the latter were formulated as priorities to guide the implementation of human rights standards in PISG to guarantee the existence of a multiethnic society³⁴⁷.

The *Standards before Status* policy was devised by SR SG Steiner in 2002 as a basis for measuring the progress achieved by PISG in eight areas: functioning democratic institutions, rule of law, freedom of movement, returns and reintegration, economy, property rights, dialogue with Belgrade and the Kosovo Protection Corps (KPC). Although eagerly accepted by the Kosovo Serbs, this UN policy was seen as an obstacle to independence by the Albanians, who viewed the stipulated benchmarks as too ambitious and too time-consuming, ‘taking too long to hand over power’ (Balkan Crisis Report 2003: 5). The unpopularity of the *Standards before Status*³⁴⁸ led to their eventual abolition and replacement in 2003 with the *Standards for Kosovo* policies. However, the initial existence of *Standards before Status* allowed the Kosovo Serbs to tie their participation levels to the question of final status settlement and benchmarks achieved, for they knew that as long as the Standards were not achieved, the status

³⁴⁶ See Smyrek (2006: 173-176).

³⁴⁷ The aim of the *Standards for Kosovo* was expressed in the Preamble of the Constitutional Framework for Kosovo: ‘A Kosovo where all – regardless of ethnic background, race or religion – are free to live, work and travel without fear, hostility or danger...’

³⁴⁸ Kristensen (2006: 141, 145) equates the ‘Standards before Status’ policy in Kosovo with positive sovereignty, arguing that ‘the benchmarks have been used more to legitimize the continuation of the international administration and defer the discussion of final status than to build democratic institutions for self-government’.

question would be put off indefinitely. Thus, deliberate obstruction of the Standards policy could also be witnessed.

5.6.3 Standards for Kosovo

The *Standards for Kosovo* were adopted on 10 December 2003 following the unpopular legacy of its predecessor and retained the eight categories of benchmarks as stipulated in 2002. This policy was initiated by SR SG Holkeri and has been called ‘a more operative approach’, foreseeing ‘a more equal partnership between UNMIK and PISG’, however, this framework was shattered by the March 2004 violence and in November 2004 SR SG Jessen-Petersen restructured UNMIK and its Standards approach to prioritize six areas: security and rule of law, freedom of movement, returns and protection of minorities, functioning democratic institutions and reform of local government³⁴⁹. Thus, although the Standards for Kosovo continued to be active, attention was considerably awarded to the six priority areas identified.

The Standards for Kosovo were elaborated in detail in the *Kosovo Standards Implementation Plan* (KSIP), endorsed on 31 March 2004, which set out the actions and policies to achieve the *Standards for Kosovo*³⁵⁰. Thus, the *Standards for Kosovo* establish the legal foundations and guidelines for the *Kosovo Standards Implementation Plan*³⁵¹. KSIP indicates what actions are designed to meet the standards, who is the responsible actor to do so, who supports the principal actor and when the standard is supposed to be achieved, in terms of a timeline (KSIP 2004: 3). Thus, KSIP sets a detailed analysis of the *Standards for Kosovo* policy and stipulates the detailed time-frames and actions to be pursued in terms of each standard set. The priorities listed for each standard are stipulated in KSIP to be achieved as soon as possible, at the latest by mid-2005³⁵².

UNMIK³⁵³ indicated that the *Standards for Kosovo* will be fulfilled, when the following criteria have been achieved:

- I. *Functioning Democratic Institutions* – the PISG are freely and fairly elected and when they govern in an impartial, transparent and accountable manner and hate speech and media are regulated.

³⁴⁹ S/2004/907, Annex I, Para.1.

³⁵⁰ KSIP, executive summary.

³⁵¹ Ibid.

³⁵² KSIP.

³⁵³ See *Standards for Kosovo – What are the Standards?* UNMIK/DPI, 2005.

- II. *Rule of Law* – when a sound legal framework and effective law enforcement exists, with no one being above the law and there are strong measures to fight financial and economic crime, as well as interethnic crime, with anticorruption laws being enforced.
- III. *Freedom of Movement* – ‘All people in Kosovo are able to travel, work and live in safety without fear of attack, harassment or intimidation. All people are free to use their language anywhere in Kosovo’³⁵⁴ and all people can freely access markets, public and social utilities.
- IV. *Sustainable Returns and the Rights of Communities* – when all who wish to return to Kosovo from the refugees and displaced persons are allowed to do so ‘in safety and dignity’, and when members of all communities are ‘able to participate in the economic, social and political life of Kosovo’³⁵⁵ without threats to their security based on ethnicity.
- V. *Economy* – ‘a legal framework for a sustainable, competitive market economy is in place and implemented’³⁵⁶. There should also be a regime that sustains government and provides basic services to all (e.g. health and education).
- VI. *Property Rights* – ‘all people should have the right to own and live in their homes anywhere in Kosovo’³⁵⁷. The enforcement of property rights is deemed essential to encourage returns of internally displaced persons (IDPs). Disputes over agricultural land and commercial property ought to be remedied within a system.
- VII. *Dialogue* – ‘There must be a constructive and continuing dialogue between PISG and their counterparts in Belgrade over practical issues, such as energy, transport, communications, ...’³⁵⁸ Kosovo’s cooperation within the region should be well developed.

³⁵⁴ Ibid.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

- VIII. *KPC* – the KPC should fully comply with its mandate and ensure public safety in times of disaster or emergency. It should represent all communities in Kosovo and cooperate in a transparent and accountable manner.

It is clear that the *Standards for Kosovo* represent an ambitious project with concrete benchmarks to achieve. Although the benchmarks listed under each standard to achieve are numerous, the following tables provide a synthesis of the progress achieved and in these cases where the standard refers to an institution, such as PISG or KPC, the focus has been on tangible and measurable issues such as the achievement of a minority employment quota in line with the greater objective to found a multi-ethnic society in Kosovo. Thus, the following tables witness the progress made by Kosovars with regards to the *Standards for Kosovo*, examining this progress in a qualitative manner in the period 2002 – August 2008. The beginning of the examination period is well before the actual endorsement of the *Standards for Kosovo*, namely it covers also the period of the *Standards before Status* for two reasons: firstly, to a large extent the standards have remained the same and secondly, by including the period 2002-2003 in the tables a larger time-frame of analysis can be offered, as well as an oversight of the detrimental effect of the March 2004 violence on the progress made. The analysis of the benchmarks achieved ends in mid-2008, shortly before the start of transfer of authority to EULEX and the decision to downscale UNMIK in August 2008. The implementation of the eight standards has been judged according to progress made with regard to the actual goal of the standard set and not in comparison with the position on this standard in the preceding years. The percentages given with regard to the minority employment quota in PISG and KPC also reflect the latest figure for the respective year and not the mean average for the entire year.

Table 4: Benchmarks achieved, I

Benchmark	I. Functioning Democratic Institutions				
	Elections		PISG		Media (progress on standards of tolerance, civility and fairness ³⁵⁹)
Year	Voter Turnout (above 60%)	Minority Participation	Progress on Parallel Structures	Minority Employment Achieved Quota (16,6%)	
2002	- (54% ³⁶⁰)	-	-	-	-
2003	n/a	n/a	-	- (10% ³⁶¹)	+/- ³⁶²
2004	- (54% ³⁶³)	-	-	- (9,6% ³⁶⁴)	-
2005	n/a	n/a	-	- (10,2% ³⁶⁵)	+
2006	n/a	n/a	-	- (11,4% ³⁶⁶)	+
2007	- (43% ³⁶⁷)	-	-	- (11,5% ³⁶⁸)	+
2008	n/a	n/a	-	-	+

Sources: Reports of the UN SG on UNMIK (2002-2008)³⁶⁹, compilation: D.C.S.

By examining the progress achieved by the PISG on the first standard for Kosovo, namely functioning democratic institutions, one witnesses a picture of mixed progress. Although UNMIK completed the transfer of responsibilities under Chapter 5 of the Constitutional Framework to the PISG in 2004³⁷⁰, progress achieved by these institutions to incorporate all communities in Kosovo has remained unsatisfactory. Voter turnout, generally, has been rather low with the trend declining, as witnessed at the central and municipal elections on 8 December 2007. Minority participation in all elections from 2002 – 2008 has been minimal. A plugging problem that has not been overcome by UNMIK has been the continued existence of parallel structures in the minority-dominant areas and the inability to fulfil the minority employment quota within PISG. Upon the *Declaration of Independence* of the Republic of Kosovo on 17

³⁵⁹ Within the media it is aimed to achieve standards of tolerance, civility and fairness, S/2004/613, Para. 22.

³⁶⁰ OSCE, Mission in Kosovo, Certified Results, Elections 2002.

³⁶¹ S/2003/996, Para. 13.

³⁶² The Temporary Media Commission (TMC) ensures that Kosovo conforms to international standards (S/2004/71, Para. 17).

³⁶³ In contrast to 2001, when election turnout was 64%, on 23 October 2004, only 54% of the predominantly Kosovo Albanians voted for the Kosovo Assembly, yet these were the first elections to a large extent organized by the people themselves (S/2004/907, Annex I, Paras. 2 & 6).

³⁶⁴ S/2004/907, Annex I, Para. 10.

³⁶⁵ S/2005/335, Annex I, Para. 12.

³⁶⁶ S/2006/361, Annex I, Para. 7.

³⁶⁷ S/2007/768, Para. 3.

³⁶⁸ S/2007/395, Annex I, Para. 7, S/2007/582, Annex I, Para. 6.

³⁶⁹ S/2002/432, S/2002/436, S/2002/779, S/2002/1126, S/2003/113, S/2003/421, S/2003/675, S/2003/996, S/2004/71, S/2004/348, S/2004/613, S/2004/907, S/2005/88, S/2005/335, S/2005/635, S/2006/45, S/2006/361, S/2006/707, S/2006/906, S/2007/134, S/2007/168, S/2007/395, S/2007/582, S/2007/768, S/2008/211, S/2008/354, S/2008/458.

³⁷⁰ S/2004/71, Para. 5.

February 2008, parallel municipal assemblies have been established in Shtërpce/Štrpce and Novobërdë/ Novo Brdo³⁷¹. On the other hand, the establishment of a Temporary Media Commission (TMC) and its transformation later to an Independent Media Commission (IMC) have been able to investigate complaints made against televised programs by RTK or local newspapers that instigate hate speech or ethnic hatred. The mixed picture of success can also be noted in benchmarks II and III.

Table 5: Benchmarks achieved, II & III

Benchmark	II. Rule of Law			III. Freedom of Movement	
	Equal Access to Justice	No one is above the law	Progress on Economic and Financial Crime (corruption)	Freedom of Movement	Free Use of Language
2002	-	-	-	-	-
2003	-	-	-	+/- ³⁷²	-
2004	-	-	+/- ³⁷³	-	-
2005	-	-	-	-	+/- ³⁷⁴
2006	-	-	-	-	+/-
2007	+/-	+/-	+/-	+/- ³⁷⁵	+/-
2008	+/-	+/-	+/-	+/-	+/-

Sources: Reports of the UN SG on UNMIK (2002-2008), compilation: D.C.S.

Notable with regard to progress on the *Rule of Law* and *Freedom of Movement* benchmarks has been the long time it has taken to institute a fair justice system that is accessible for all with no intimidation of witnesses. A boost for the rule of law has been the surrender on 8 March 2005 of Kosovo Prime Minister Haradinaj to the International Criminal Tribunal for the former Yugoslavia (ICTY) and his resignation from office. However, numerous perpetrators of crimes in the March 2004 violence still remain at large and additionally 100 Kosovo Police Service (KPS) officers have been identified as practicing misconduct in the March violence, pointing to the fact that certain individuals are above the law³⁷⁶. With regard to freedom of movement, stoning and harassment has persisted, leading to mixed results and the persistence of

³⁷¹ S/2008/458, Annex I, Para. 2.

³⁷² Police and military escorts of minority communities have been 'significantly reduced without deterioration in security conditions' (S/2003/421, Para. 25).

³⁷³ There has been mixed progress on corruption, a Law on Anti-Corruption has been passed, nevertheless economic and financial crime remains widespread (S/2004/907, Annex I).

³⁷⁴ Official signs on buildings were compliant or partially compliant with language policy, achieving 100% compliance in Central Assembly plenary sessions and 65% compliance in municipalities, (S/2005/335, Annex I, Para. 7).

³⁷⁵ Although not completely achieved, less than 1% of minorities travelling request escorts and 90% of minorities travel outside their residence area (S/2007/134, Annex I, Paras. 43-47). There have been almost no crimes reported related to freedom of movement, however, stoning has persisted (S/2007/395, Annex I, Para. 38).

³⁷⁶ S/2004/613, Para. 26.

segregation in the public transport system, since the occasional use of escorts from the police and KFOR has failed to be eradicated³⁷⁷. King & Mason (2006: 111) note that: ‘Throwing stones at the military vehicles became a cruel local sport, made only more challenging by the presence of KFOR foot soldiers in the best places to throw from, and the high speed of the convoy’. Thus, in 2004, UN SG exclaimed that the lack of progress in returns, freedom of movement, reconciliation and security has been a ‘cause for concern’³⁷⁸.

The constraints encountered with benchmarks such as freedom of movement impacted negatively also on the amount of returns and property rights in the region. Interestingly, apart from the attempted national dialogue between Pristina and Belgrade, no reconciliation efforts were undertaken between the two communities. No Truth and Reconciliation Commission had been set up to investigate crimes against humanity and counter impunity, as was the case in other countries plagued by ethnic tensions and racial segregation (South Africa). In East Timor where the divisions within society have not been so evident and where most human rights perpetrators had been Indonesian, a Commission for Reception, Truth and Reconciliation had been set up. According to this study the establishment of such a commission impacted positively on peacebuilding and the creation of democratic and liberal structures within the state.

³⁷⁷ Five years after UNMIK’s establishment UN SG notes that ‘Serbs travel only with escorts’ (S/2004/907, Annex I, Para. 22).

³⁷⁸ S/2004/907, Para. 7.

Table 6: Benchmarks achieved, IV, V & VI

Benchmark	IV. Sustainable Returns, Rights of Communities		V. Economy	VI. Property Rights	
	Rights of Communities	Sustainable Returns	Economy (self-sustaining)	Property Rights	Preservation of Cultural Heritage
2002	-	+/-	+/-	+/-	-
2003	-	+/- ³⁷⁹	+/- ³⁸⁰	+/- ³⁸¹	-
2004	-	-	+/- ³⁸²	-	+/-
2005	+/-	-	+/- ³⁸³	+/-	+/-
2006	+/-	-	+/- ³⁸⁴	+/- ³⁸⁵	+/- ³⁸⁶
2007	+/-	+/-	+/-	+/-	+/- ³⁸⁷
2008	+/-	-	+/-	+/-	+/- ³⁸⁸

Sources: Reports of the UN SG on UNMIK (2002-2008), compilation: D.C.S.

The detrimental effects of the March 2004 violence can be witnessed in table six, in particular with regard to the progress made on sustainable returns and property rights. Thus, before mid-March 2004 ‘limited, but encouraging prospects for returns’ existed³⁸⁹, however, for several years thereafter the amount of Kosovo Serbs leaving the province has exceeded those willing to return. Thus, the question of returns has

³⁷⁹ ‘Given the continued violence, harassment and discrimination faced by minorities, achieving sustainable minority returns is difficult in Kosovo’ (S/2003/421, Para. 31), nevertheless it is noted that the ‘overall rate of returns continued to accelerate’ due to the engagement of senior level representatives of PISG (S/2003/996, Paras. 30, 31).

³⁸⁰ Kosovo Trust Agency (KTA) established its operational policies and procedures in order to prepare for privatization (S/2003/421, Para. 38), although unemployment remained at 50-60% (S/2004/71, Para. 37).

³⁸¹ 12,7 % of all claims to property had been resolved and there have been 30% more claims made compared to the previous year (S/2003/421, Para. 43).

³⁸² Although there was progress in economic legislation and privatization, the economy is far from self-sustaining itself (S/2004/907, Annex I, Para. 22).

³⁸³ Disputes with regard to control over socially-owned land and the organization of tenders existed (S/2005/335, Annex I, Para. 55). Clapham (2005: 23) has linked economic reconstruction and financial development to the status question, claiming that as long as Belgrade remained the ‘formal sovereign authority in Kosovo, no international institution has been able to lend to Kosovo...nor have any but the most fearless private investors been willing to risk their capital there – especially by buying state- or socially-owned enterprises whose ownership cannot be guaranteed’.

³⁸⁴ Compliance with recommendations of the International Monetary Fund (IMF) remains a major ‘challenge’ (S/2006/906, Annex I, Para. 65).

³⁸⁵ Slow progress noted, but the rate of repossession of property remains ‘low’ and ‘illegal occupation of non-residential properties continues to be a widespread phenomenon’ (S/2006/906, Annex I, Paras. 73-74).

³⁸⁶ A Reconstruction Implementation Commission was established in 2004, however not all cases of theft and damages to cultural heritage sites have been cleared (S/2006/45, Annex I, Para. 122).

³⁸⁷ After six months of suspension, the Reconstruction Implementation Commission assumed once again its responsibilities (S/2007/582, Annex I, Para. 80).

³⁸⁸ Following a successful reconstruction of 13 sites in the second half of 2007, the 2008 meeting of the Reconstruction Implementation Commission was suspended by the Serbian Orthodox Church and the Serbian Institute for the Protection of Monuments due to the political situation after declared independence, and followed by a direct agreement between the Serbian Orthodox Church and the Government of Serbia (S/2008/211, Para. 20). However, work resumed in Spring 2008 (S/2008/458, Annex I, Para. 58).

³⁸⁹ S/2004/348, Para. 21.

been directly influenced by the question of security and the presence of violence/interethnic crime.

Table 7: Benchmarks achieved, VII & VIII

Benchmark	VII. Dialogue		VIII. Kosovo Protection Corps (KPC)
Year	Pristina-Belgrade	Regional Cooperation	Minority Employment achieved quota (10%)
2002	+	+	- (3,5% ³⁹⁰)
2003	+ ³⁹¹	+	- (3,5% ³⁹²)
2004	-	+	- (4,75% ³⁹³)
2005	+/- ³⁹⁴	+	- (5,3% ³⁹⁵)
2006	+/- ³⁹⁶	+	- (7,4% ³⁹⁷)
2007	- ³⁹⁸	+	- (6,6% ³⁹⁹)
2008	-	+	- (6,2% ⁴⁰⁰)

Sources: Reports of the UN SG on UNMIK (2002-2008), compilation: D.C.S.

Table seven represents the continued rates of mixed progress achieved in Kosovo with regard to the benchmarks set. Similar to the quota for PISG, the KPC quota has not been achieved. The Pristina-Belgrade dialogue suffered due to the March 2004 violence and the introduction of Ahtisaari's 'Settlement Proposal' in 2007, as well as following the unilateral *Declaration of Independence* on 17 February 2008.

Thus, all in all, progress on the benchmarks has been steady, but 'too slow' resulting in a situation that has oft been depicted as 'stable but fragile'⁴⁰¹. Consequently, even if there has been growing political maturity in the formation of government after elections and the establishment of legislation and institutions to deal with the achievement of standards, such as the *Kosovo Property Agency*, the

³⁹⁰ S/2002/1126, Para. 16.

³⁹¹ Ministry of Labour and Social Welfare in Belgrade holds monthly meetings with its counterpart in Pristina (S/2003/996, Para. 48), interactions between municipal working groups on returns (S/2003/421, Para. 35).

³⁹² S/2003/113, Para. 56.

³⁹³ S/2004/907, Annex I, Para. 52.

³⁹⁴ After initial rejection of a dialogue on behalf of Belgrade, this dialogue resumed on 16 March 2005 (S/2005/335, Annex I, Para. 76).

³⁹⁵ S/2005/335, Annex I, Para. 84.

³⁹⁶ Only two of the working groups established for a direct dialogue between Pristina and Belgrade have met and been active in discussions (S/2006/361, Para. 11). However, on 6 June 2006 the *Protocol on Voluntary and Sustainable Returns* was signed with technical cooperation both from Belgrade and Pristina (S/2006/707, Para. 23). Dialogue enhanced due to the improved relation between the Pristina Government and the Serbian Orthodox Church (S/2006/45, Annex I, Para. 137).

³⁹⁷ S/2006/906, Annex I, Para. 87.

³⁹⁸ With the status talks underway, the dialogue between Pristina and Belgrade started to decline, with eventually only one out of four commissions remaining active (S/2007/395, Annex I, Para. 82).

³⁹⁹ S/2007/768, Annex I, Para. 100.

⁴⁰⁰ S/2008/458, Annex I, Para. 63.

⁴⁰¹ S/2006/45, Para. 6, S/2006/707, Para. 15.

Independent Media Commission (preceded by the *Temporary Media Commission*), the *Kosovo Trust Agency* and the *Reconstruction and Implementation Commission*, this study reiterates the findings of the UN SG in 2005 that ‘none of the eight standards has been completely fulfilled’⁴⁰². A quick look at the mixed progress of UNMIK and the PISG in Kosovo refers to the ‘little common ground’ between the Serbian and Albanian inhabitants of Kosovo and Serbia proper not only with regard to Kosovo’s final status, whereby the former have insisted on ‘substantial autonomy’ and the latter on ‘full independence’⁴⁰³, but this ‘little common ground’ has also been reflected in the entire progress on the *Standards for Kosovo*.

5.6.3.1 European Partnership Action Plan

The Kosovo Standards Implementation Plan (KSIP) failed to achieve all *Standards for Kosovo* by the foreseen end deadline, mid-2005. Thus, in August 2006 the *Kosovo Action Plan for the Implementation of European Partnership* (European Partnership Action Plan - EPAP) was promulgated to replace KSIP⁴⁰⁴. EPAP did not want to ‘prejudge’ the ‘future status process of Kosovo’, yet it deemed as necessary to revise the standards set for Kosovo in order to be able to progress on the question of Kosovo’s final status⁴⁰⁵. Simultaneously, EPAP incorporated the standards as requirements for Kosovo’s long-term European perspective and thus, underscored the central focus of the standards – that these should be efforts of the PISG throughout and beyond the status question⁴⁰⁶. Despite the fact that EPAP replaced KSIP, the outlined eight standards designed for Kosovo remained very much in place and progress achieved on these standards was also the focus of all UN SG reports on UNMIK from 2006 onwards.

5.6.4 International powers contrary to positions of UN TA

Although not adamantly professed, differences of opinion within the Great Power bloc existed already before the establishment of UN SCR 1244 and the discussion of Kosovo’s future status. *Operation Allied Force* of NATO in 1999 was not supported by China and Russia, who continuously called for a UN SC authorization of NATO’s

⁴⁰² S/2005/88, Para. 2.

⁴⁰³ S/2006/707, Para. 29.

⁴⁰⁴ S/2006/707, Para. 14.

⁴⁰⁵ EPAP (2006: 17).

⁴⁰⁶ S/2006/45, Para. 9.

actions through a UN SCR. When the time arrived to graft such a resolution on Kosovo the divergent views were transposed into the controversial and contradictory objectives of UN SCR 1244, pledging commitment to the territorial integrity of the Federal Republic of Yugoslavia and at the same time calling for a substantial autonomy of Kosovo. It is here that one is reminded of Durch's (1993b: 26) statement that 'Ambiguous mandates are often a sign that the interests of the Great Powers diverge with regards to a mission, but they are willing to go along with it, as long as its duties are fudged'. However, the lack of a common stance on the Kosovo issue professed itself evidently with the beginning of talks over Kosovo's future status in 2005 and Kai Eide's suggestion that further postponing of the final status question will lead to destabilization and regress on the progress made by UNMIK thus far⁴⁰⁷. Ahtisaari's proposal in February 2007 for 'supervised independence' was likewise rejected by China and Russia and currently neither of the two countries has recognized Kosovo's *Declaration of Independence*. Russia has officially pledged its support to Belgrade and on numerous occasions. Moreover, with the outbreak of violence in the separatist republics of Georgia, Abkhazia and South Ossetia, Russian President Medvedev has cited Kosovo as a precedent and justification of the recognition of the unilaterally declared independent republics in the Caucasus⁴⁰⁸. Thus, the disobedience that Kosovo Serbs have been showing with regard to the UNMIK benchmarks and standards set has had solid backup not only from Serbia proper, but also from powerful international actors.

5.6.5 Summary

Thus, in Kosovo the initially imposed *Standards before Status* policy (implying that ambitious standards are to be achieved with regard to democratization, minorities and human rights amongst others, before the status question can be discussed) resulted in a deadlock and dissatisfaction among the local population, which led to further outbreak of violence in March 2004 (five years after UN deployment). The progress reports of the UN SG on UNMIK have identified repeatedly the following drawbacks: the existence of Serb parallel structures in the health and education sectors⁴⁰⁹ and low

⁴⁰⁷ S/2005/635.

⁴⁰⁸ BBC News, 26 August 2008.

⁴⁰⁹ S/2004/907, Annex I, Para. 9.

minority employment in the provisional structures⁴¹⁰, as well as insufficient functioning of language units: ‘names of streets, cities, towns, villages, roads and public places are often expressed in the language of the majority community’⁴¹¹. Moreover, the rate of returns has been slow and the support of the community leaders for returns has been ‘irregular’⁴¹². The reports draw attention to the segregation of the civil transport system (using humanitarian buses and a ‘freedom of movement train’ for minorities)⁴¹³, which has impacted negatively on the freedom of movement, rate of returns and protection of human rights and minority employment in the government⁴¹⁴.

In 2005 the Special Envoy to the UN SG, Kai Eide, issued a report, in which he qualified the returns process in Kosovo as having come to a ‘halt’ and called the existence of Roma camps in Plementina and Zitkovac ‘disgraceful’⁴¹⁵. Kai Eide further noted that the record of standards implementation was ‘uneven’⁴¹⁶ and concluded that the rule of law had been hampered by a lack of ability and readiness to enforce legislation at all levels, crimes of ethnic origin had remained difficult for the Kosovo Police Service (KPS) to address, predicting a ‘grim’ future for freedom of movement⁴¹⁷. All of these events have resulted according to Eide in a situation where more Serbs are leaving the province than returning to it⁴¹⁸. On the question of Kosovo’s future status Eide referred to the growing ‘Kosovo fatigue’ amongst internationals⁴¹⁹.

Prior to the March 2004 violence, the situation in Kosovo was reported as being more stable. Back in 2002 Reports of the Security Council and Secretary-General were rather optimistic about the progress being made by UNMIK. In 2002 there was a 27% decrease in the crime rate and for the first time in 2002 the inflow of minority returns exceeded the outflow, the second round of elections had been conducted in an orderly and peaceful manner and UNMIK had extended its authority to the northern part of

⁴¹⁰ Ibid, Annex I, Para. 10, S/2005/88, Annex 1, Para. 13.

⁴¹¹ Ibid, Annex I, Paras.23-6, S/2005/88, Annex I, Para. 15.

⁴¹² Ibid, Annex I, Para. 29.

⁴¹³ A/59/623, Component 1, S/2005/88, Annex 1, Para. 32. It was only on 1 January 2007 that the PISG (the Ministry of Transport and Communications and the Ministry of Communities and Returns) took over the responsibility for the humanitarian and special transportation services for minority communities in Kosovo (OSCE Report No.2, 2007).

⁴¹⁴ S/2005/88, Annex I, Para. 25.

⁴¹⁵ S/2005/635, Para. 4

⁴¹⁶ Ibid, Para. 2.

⁴¹⁷ Ibid, Para. 3.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid, Para. 19.

Mitrovica⁴²⁰. However, northern Mitrovica remained the only multi-ethnic city in Kosovo, whereas the rest of the country was characterized by insecurity, lack of freedom of movement, uncontrolled property sale, absence of returns and a slow pace of decentralization, subsequently, most of the inhabitants of northern Mitrovica had boycotted the local elections⁴²¹.

In 2002 there was a good relationship between Belgrade and UNMIK and the UN Security Council Commission in Kosovo noted that progress still needed to be made in the following areas: rule of law, sustainable returns (a precondition for a multi-ethnic society), local ownership of Kosovo's progress (the Mission is under the impression that the progress until now has been achieved predominantly by the international community), democratic development (low participation of Serbs in municipal elections), inter-ethnic reconciliation and dialogue (resolution of the missing persons problem is paramount in this regard), cooperation between Pristina and Belgrade⁴²².

The equal access to justice and the rule of law had been consistently undermined by the intimidation of witnesses and threats⁴²³. In 2006 serious security incidents against minorities increased⁴²⁴.

Table eight demonstrates the benchmarks achieved within Kosovo and displays how the lack of settlement of the Kosovo final status question due to the vagueness of UN SCR 1244 and the ambitious standards translated into uncertain local participation quotas and above all, escalated in the March 2004 violence.

Table 8: Benchmarks achieved in Kosovo

Benchmarks achieved	Kosovo (1999 – 2008)
Clear mandate	-
Clear objectives	-
High number of benchmarks achieved	-
No support of powerful international actors of positions contrary to UN	-

Sources: UNSCR 1244, Tables 3-6, author: D.C.S.

⁴²⁰ S/2002/1376, Para. 5.

⁴²¹ S/2002/1376, Paras. 36 and 37.

⁴²² S/2002/1376, Paras. 62 & 77.

⁴²³ S/2006/45, Annex I, Paras. 41-44.

⁴²⁴ S/2006/45, Annex I, Para. 49.

Thus, having discussed the three research variables of conflicting ethnic interests, local participation and benchmarks achieved, it is now time to examine the *Space for Local Ownership of Peacebuilding (SLOP)* in Kosovo.

5.7 SLOP in Kosovo

It is obvious that *de jure* a lot of progress has been made in Kosovo – PISG have been established, free and fair elections have taken place (unfortunately boycotted by the Serbian minority), numerous legislations and laws have been adopted following international humanitarian and European standards (such as the Law on Anti-Corruption, the Law on Anti-Discrimination, legislation concerning the media, privatization, sale of property, etc.). Yet, *de facto* the achievement of local ownership seems to have been undermined by the Kosovo Serb community, which has set up its own parallel institutions and has boycotted local participatory endeavours in the PISG of Kosovo. *SLOP* has, as a result, been limited by the low levels of local participation and the low levels of benchmarks achieved. Were it not for the unilateral *Declaration of Independence* of the Kosovo Assembly in February 2008, this study doubts that the final status question would ever have been settled in Kosovo. The causation suggested that high conflicting ethnic interests lead to lower local participation and fewer benchmarks achieved has been demonstrated and illustrated by the Kosovo case. Unravelling the intricacies of the Kosovo peace process has demonstrated also that UNMIK and the practice of peacebuilding have set up a dynamic of their own – an interplay between benchmarks achieved, local participation and conflicting ethnic interests that has resembled a vicious circle, whereby all variables have mutually constituted each other and impacted upon each other. All these developments have led to a rather limited *SLOP* in Kosovo. For indeed, the PISG and the transitional structures instituted within the country have not succeeded in solving the initial root cause to the conflict and have not transformed the competing ethnic identities. Thus, this study doubts that the international community will be able to leave Kosovo in the near future. Peacebuilding, as an extended peacekeeping mandate with much far-reaching goals than keeping the ceasefire, aims to rebuild and reconstruct a post-conflict society into a functioning society and in this sense just keeping the peace will not do, successful governance, i.e. local ownership is needed. As already stated *SLOP*

can also be analysed from the point of view of a rationalist and a constructivist perspective within International Relations. In the following section attention is dedicated to both theoretical frameworks and their explanatory power with regard to Kosovo.

5.7.1 Rationalism vis-à-vis constructivism in Kosovo

As already pointed out the rationalist (horizontal reading) of *SLOP* has been obvious in the Kosovo setting. Conflicting ethnic interests have not only impacted negatively on local participation and benchmarks achieved, thus, limiting *SLOP*, but worse still, these conflicting ethnic interests have persisted and have even been institutionalized in the present political system. Thus, due to the fact that conflicting ethnic interests have not been successfully reconstituted, deconstructed and reconstructed into more cooperative ones, this study argues that in the Kosovo case the horizontal dissection of *SLOP* seems to have been more dominant than the vertical dissection. Conflicting ethnic interests remained exogenously given and there have been no indications that during the peacebuilding process UNMIK has succeeded in moulding them into non-conflicting ones, if anything they have at times even been strengthened, with an escalation in March 2004. Thus, one can also state that the Kosovo Serbs adjusted well to the position of ‘spoilers’ in the peacebuilding process and were well-supported by Serbia proper and the Serbian government in their parallel structures and boycotting actions. On the other hand, however, the Kosovo Serbs have been able to act as spoilers in the UNMIK structures only due to the importance accredited to the region in international politics and due to the divergent interests of the international powers in Kosovo. The UN SC has been unable to pass a UN SCR that surpasses the territorial integrity of the Republic of Serbia, in other words, to adopt a resolution that replaces UN SCR 1244, for Russia has threatened to use its veto powers. Thus, it is debatable whether in the near future Kosovo will be allowed to achieve true local ownership (commitment to and exercise of liberal self-government) or will remain under prolonged international supervision (EULEX).

In terms of a constructivist account of the Kosovo case and mutually constitutive identities, it can be argued that this theoretical approach can explain very weakly the Kosovo case. The internationally-promoted norms of good governance (*Standards before Status*) were adjusted to *Standards for Kosovo* and a *European*

Partnership Action Plan in order to better resonate with and represent the wishes of the local population. However, the different norms espoused by the conflicting ethnic groups in Kosovo have proven irreconcilable and non-negotiable, in other words, the international community has failed to solve the root cause of the problem (ethnic conflict and the resulting from it *status quo* issue). Thus, UNMIK has failed to forge a more constructive collective identity to replace the destructive foes of ethnic conflict. In fact, the presence of UNMIK has managed to substitute one type of parallel structures (Albanian ones) with another type of parallel institutions (Serbian ones) in Kosovo. Thus, in terms of the Kosovo case, it can be argued that rationalism and realism (pointing to the importance of power and Great Power positioning) can better explain the reality of peacebuilding. Therefore, if one follows Durch's (1993b) logic that vague mandates are the result of conflicting Great Power interests, the vague wording of UN SCR 1244 and the tolerance of Serb parallel structures in Kosovo with such a big supporter as Russia, one wonders whether it was not the aim of the international community never to solve the Kosovo conflict.

5.8 Conclusion

The current chapter has illustrated the specifics of international peacebuilding under the auspices of the UN in Kosovo. The *SLOP* model in Kosovo represents the dynamics of contemporary peacebuilding. By analysing the intricate process of peacebuilding undertaken by UNMIK, it has been established that the presence of conflicting ethnic interests has translated into insufficient local participation and benchmarks achieved, which has led to a reduced *SLOP* in Kosovo. Moreover, due to the support of international actors of the Serb position regarding Kosovo's independence (Russian Federation and People's Republic of China), the achievement of local ownership has been obstructed and has been directly observed by the inability of the international community to leave Kosovo despite a unilateral *Declaration of Independence* on behalf of the Kosovo Assembly.

All in all, UNMIK has had mixed results in Kosovo. An analysis of the progress reports of the UN SG has illustrated that the rates of progress have been not only fluctuating, but also precarious. Numerous reports for different years indicate that

the overall security situation is ‘stable, but fragile’⁴²⁵. Mixed results have also been noted with regard to the issue of returns and property rights, as well as cultural heritage. Some issues have remained unresolved, such as ensuring freedom of movement, lack of harassment, stoning, minority employment quota in the public sector and KPC and minority participation in the elections. In essence, local participation in the transitional structures has remained low and conflicting ethnic interests have persisted. Thus, even though the *Space for Local Ownership in Kosovo* has remained lower than expected by UNMIK, the efforts of the UN TA remain commendable. The rigour and perseverance of norms of good governance in Kosovo will definitely go down in history as one of the most ambitious missions the UN has ever undertaken. Then again, precisely this has been the point of the current study – to demonstrate that macro intentions and endeavours alone cannot really create success and local ownership, cannot substitute the missing elements in local participation and cannot resolve the initial causes of the conflict. In Kosovo that has certainly been case. Slightly different has been the experience of East Timor.

⁴²⁵ S/2007/582, Annex I, Para. 36, S/2008/211, Para. 11.

6. THE SPACE FOR LOCAL OWNERSHIP OF PEACEBUILDING IN EAST TIMOR

6.1 Introduction

The present chapter analyses the United Nations Transitional Administration in East Timor (UNTAET 1999-2002). Unlike the Kosovo case, where the UN has been present on the territory almost ten years after its establishment, the East Timor case has been characterized by a quick involvement of the international community in the non-self-governing territory. Since this chapter reveals the experience of peacebuilding pertaining to the second case study, East Timor, throughout the chapter comparisons with UNMIK and the Kosovo experience are made. Similar to Kosovo, clues underlying the success of UNTAET have been sought on the local, national and international levels of the TA policy initiation and execution, as well as by examining the root causes of the conflict that led to UN involvement in the first place. Therefore, in the following section a detailed analysis of the background to the East Timor conflict is provided.

6.2 Conflict background

Similar to Kosovo's case, the East Timor conflict can be described as a struggle for independence. However, due to the fact that East Timor was a previous Portuguese colony and was illegally annexed in 1975 by Indonesia, the 1999 UN involvement was organized so as to prepare the non-self-governing territory for independence and thus, end an unfinished business of decolonization. Consequently, decolonization⁴²⁶ has oft been stressed by authors as the main reason for UN involvement in East Timor as opposed to territorial settlement in Kosovo. Yet, in both cases the struggle for

⁴²⁶ Refer to Smith and Dee (2003), Smyrek (2006), Zaum (2007), Wilde (2008).

independence has been marked by brutal conflict and this section elucidates precisely on the conflict background and occurrences preceding UNTAET.

6.2.1 Portuguese colonialism

Currently East Timor comprises the eastern half of the island of Timor, together with the nearby islands of Atauro and Jaco, and the enclave on the northwestern side of the Indonesian Timor island, Oecussi-Ambeno⁴²⁷. The first population census of Timor-Leste carried out in 2004 points to a small territory and a small population (as already mentioned in chapter four), roughly less than one million inhabitants and around 96,120 square kilometres⁴²⁸. Yet, even though East Timor is a small country, its history has been turbulent.

Authors concur that East Timor has been a Portuguese colony since the 16th century (Elliott 1978: 238, Loch 2007, Smyrek 2006). ‘East Timor, the eastern part of the island Timor in the Indonesian archipelago had been a Portuguese colony since the 16th century’, while the Dutch colony in the west of the island became part of Indonesia after 1949 (Zaum 2007: 181). The Portuguese government refused to surrender its authority over East Timor and as a result in 1960 East Timor was put on the list of non-self-governing territories⁴²⁹. It is only after the Carnation Revolution in 1974 and the end of the Salazar regime that Portugal acknowledged its obligation to decolonize under Chapter XI of the UN Charter and in July 1975 the Portuguese Parliament passed a law that detailed the decolonization process in East Timor and provided for the establishment of a provisional government, elections and independence by 1978 (Zaum 2007: 181). Until the change of government in Portugal in 1974, Portugal had considered East Timor as its ‘overseas province’ (Martin 2001: 15).

Congruence amongst authors depicts three political parties in East Timor that could compete for the elections and the creation of a provisional government in 1975 – the Timorese Democratic Union (UDT – *União Democrática de Timor*), which favoured a transitional period in association with Portugal, the Timorese Social

⁴²⁷ *Constitution of the Democratic Republic of East Timor*, Section 4, Para. 1.

⁴²⁸ For further detail consult *The 2004 Population and Housing Census of Timor-Leste*, the first population census for Timor-Leste.

⁴²⁹ Thus Ballard (2008: 27) argues that the UN interest in East Timor was awakened for the first time in 1960 as the General Assembly added ‘Timor and dependencies’ to the areas where Chapter XI of the United Nations applied.

Democratic Association (ASDT - *Associação Social Democrática Timor*), which consisted of anti-colonial groups and the Timorese Popular Democratic Association (APODETI - *Associação Popular Democrática Timorese*), a minor party desiring integration with Indonesia (Zaum 2007: 181, Loch 2007: 128, Martin 2001: 16). On 12 September 1974 ASDT was renamed to the Revolutionary Front for an Independent East Timor (FRETILIN – *Frente Revolucionária de Timor Leste Independente*) and stated that it desired immediate independence, in contrast to several minor parties who favoured integration with Indonesia, amongst them the most important one being APODETI (Zaum 2007: 181; Loch 2007: 128).

In an attempt to form a provisional government, a coalition was established between UDT and FRETILIN in January 1975 to collapse only four months afterwards due to the fact that UDT became increasingly pro-Indonesian, whilst FRETILIN maintained its wish to achieve independence. Martin (2001: 16) ascribes the rift that developed between FRETILIN and UDT to the fact that the former party became more left-wing, which pushed the latter party eventually towards Indonesia. Meanwhile Suharto's Indonesia feared an independent left-wing regime in East Timor with possible communist links for Indonesia and declared that Indonesia will not support an independent East Timor under a FRETILIN government (Zaum 2007: 182). Subsequently, Indonesia supported the creation of pro-Indonesian parties in East Timor and eventually occupied the eastern half of the island of Timor.

6.2.2 Indonesian occupation

The growing rift between UDT and FRETILIN led to a collapse of the coalition in May 1975 and in the following months the situation escalated to 'open hostilities and civil war' with the Portuguese governor and administration withdrawing to the nearby island of Atauro in August 1975 (Martin 2001: 16).

In the period of withdrawal of the Portuguese governor and administration, covert Indonesian troops began operating across the border with West Timor, on 28 November 1975 FRETILIN (which was in control of most of East Timor's territory) declared independence; this act was followed two days later by another declaration of independence from Portugal and integration into Indonesia by a coalition of UDT and APODETI and several small pro-Indonesian parties (Martin 2001: 16).

However, the UN and other states recognized neither declaration of independence⁴³⁰ and on 7 December 1975 Indonesia invaded East Timor⁴³¹ with tacit approval from Australia⁴³² and the United States (Zaum 2007: 182). Following Indonesian invasion, the pro-Indonesian parties in East Timor established a Regional Popular Assembly, which with the increasing control of the territory by Indonesia, at its only meeting on 31 May 1976⁴³³ petitioned Indonesia to formally integrate East Timor (Martin 2001: 16). The Decolonization Committee of the UN declined the Indonesian invitation to attend the assembly meeting in East Timor, however on 17 July 1976 President Suharto of Indonesia promulgated Law 7/76, thus, announcing the integration of East Timor into Indonesia as its 27th province, claiming that the people had exercised their act of self-determination and decided on integration with Indonesia (Martin 2001: 16, Zaum 2007, Loch 2007).

However, the Indonesian occupation of East Timor was never internationally recognized by the UN Security Council⁴³⁴ and the General Assembly called for the withdrawal of the Indonesian authorities, whilst the armed wing of FRETILIN – FALINTIL (Armed Forces for the National Liberation of East Timor, *Forças Armadas de Libertação Nacional de Timor-Leste*) continued to resist Indonesian occupation. On 22 December 1975 the UN SC adopted Resolution 384 calling on Indonesia to withdraw ‘without delay all its forces’ from the territory of East Timor and ‘to respect

⁴³⁰ Wilde (2008: 180) argues that these declarations were insufficient in laying down the foundation for independent statehood for they were made in the absence of a self-determination consultation involving all the people of the territory and thus did not constitute a legitimate expression of the will of the East Timorese, thus, the UN practice remained one of treating the territory as a non-self-governing territory and not a state.

⁴³¹ According to Martin (2001: 16) Indonesia had always denied any territorial claims over East Timor since it had never belonged to the Dutch East Indies, however on 7 December 1975 Indonesia launched a naval, air and land invasion of East Timor.

⁴³² The last Australian consul in East Timor, James Dunn commented in early 1976 (quoted in Loch 2007: 130):

The conspiracy to forcibly integrate East Timor had its beginnings in mid-1974, and involved a group of influential Indonesian generals, including Ali Murtopo, Benny Murdani and Yoga Sugama. Their motives, as confided to Western contacts, was that a republic of East Timor would become a base for communist insurgency. The immediate aftermath of US withdrawal from Vietnam was indeed a time of nervousness in Jakarta, but a more serious concern was on their agenda. It was feared that the emergence of an independent East Timor would act as a stimulant to other separatist movements in the eastern islands of the Republic, where Javanese dominance is resented.

⁴³³ By May 1976 Indonesia had managed to suppress FRETILIN’s resistance (Zaum 2007: 182).

⁴³⁴ Martin (2001: 17) notes that the UN never really recognized the power of the Regional Popular Assembly and Portugal never relinquished its authority as administering power of the territory, declaring in its constitution that it ‘...shall remain bound by its responsibility, in accordance with international law, to promote and safeguard the right to self-determination and independence of Timor-Leste’ with the President having special functions to achieve this aim.

the territorial integrity of East Timor, as well as the inalienable right of its people to self-determination' in accordance with GA Resolution 1514 (XV) – the *Declaration on Granting Independence to Colonial Countries and Peoples* (S/RES/384). On 12 December 1975 the GA passed Resolution 3485 (XXX), which recognized the 'inalienable right of all people to self-determination and independence' and called upon all States 'to respect the inalienable right of the people of Portuguese Timor to self-determination, freedom and independence and to determine their future political status' and called upon the Government of Indonesia to 'desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the territory'⁴³⁵. From 1975 until 1981 the UN GA passed annual resolutions reaffirming the inalienable right of the people of East Timor to self-determination and independence⁴³⁶.

In 1982 the GA passed resolution 37/30, which requested the UN SG to 'initiate consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive solution to the problem'⁴³⁷. In 1983 direct discussions between Indonesia and Portugal began under the auspices of the SG, however these discussions saw little progress for the next decade, in the 1990s the UN worked towards bringing East Timorese leaders to an All-Inclusive Intra-East Timorese Dialogue (AIETD) in 1995, focusing on preserving and promoting East Timorese cultural identity (Martin 2001: 18). In April 1998 the National Council of East Timorese Resistance (CNRT) under the leadership of Gusmão was set up and a growing number of pro-independence activism was witnessed (Martin 2001: 19).

Separate countries such as the United States (who feared the spread of communism in the region) *de facto* recognized Indonesia's annexation of East Timor and the Australian Prime Minister Gough Whitlam formally accepted East Timor's integration into Indonesia by naming the act as 'inevitable' (Loch 2007: 131). In 1978 Australia announced it would go beyond *de facto* recognition of the new Indonesian territory to *de jure* recognition, with the provision that talks on the seabed border between Australia and East Timor begin (the 'Timor Gap'⁴³⁸) and it was only in 1997

⁴³⁵ A/RES/3485 (XXX).

⁴³⁶ A/RES/31/35, A/RES/32/34, A/RES/33/39, A/RES/24/40,

⁴³⁷ A/RES/37/30.

⁴³⁸ According to Wilde (2008: 180) Indonesia claimed that East Timor had become its 27th province and entered into agreement with Australia to exploit the resources of the Timor Sea, in force 9 February

that Australia's Labour Party espoused the right to self-determination of East Timor (Martin 2001: 20).

In the literature numerous authors have referred to the brutal invasion and occupation by the Indonesian army of East Timor, which has been remote from an expression of the will of the people. In the following section attention is devoted to the ethnic cleansing that took part in East Timor during Indonesian invasion and occupation.

6.2.2.1 Massacres in East Timor

Many authors have described the brutal killings of East Timorese by the Indonesians as genocide and ethnic cleansing. Kiernan (2004: 200-210) estimates that the death toll from the Indonesian invasion in East Timor from 1975-1999 reached approximately 150,000 – one fifth of the population, naming the brutal massacres in December 1975 'genocide'. Loch (2007: 133) describes the activities of the Indonesian army in East Timor during the occupation by referring to Amnesty International documents that noted 'cases of extrajudicial execution, 'disappearance', imprisonment and torture, including rape, of women, in some cases women were subjected to human rights violations by the Indonesian security forces in retaliation for the pro-independence activities of their male relatives. The cover of impunity enjoyed by the Indonesian security forces and pro-integration militia also permitted practices such as sexual slavery'. For Loch (2007: 133) the death toll in East Timor during the Indonesian occupation is nothing less than 'genocide'. Chomsky (quoted in Loch 2007: 133) classifies the extermination of East Timorese during the occupation as 'perhaps the greatest death toll relative to the population since the Holocaust', for in the period of 1974 – 1999 a third of the East Timorese population died.

Bertrand (2004: 138) states that by the end of December 1975 Indonesian troops in East Timor amounted to 15,000 – 20,000, who terrorized the population with indiscriminate shootings, looting and maltreatment; 60,000 people had been killed by February 1976 (in three months). Bertrand (2004: 138) notes that in subsequent years up to 40,000 Indonesian troops occupied East Timor, pursuing a policy of 'encirclement and annihilation' – villages and fields were burnt and the population

1991, nevertheless Portugal stated its continued interest in its former colony and brought a case against Australia at the International Court of Justice, which was refused by the Court.

confined to smaller territories until completely surrounded – subsequently, population displacement, executions, imprisonment, and relocation into camps followed.

6.2.2.2 The Resistance

Despite the brutal massacres and genocide carried out in East Timor on behalf of the Indonesian army, the resistance movement survived. FALINTIL survived the persecution and in 1978 managed to reconstruct the resistance⁴³⁹. As a reaction, from 1981-4 thousands of Indonesian troops were sent again to East Timor and in the subsequent years education in East Timor was exclusively Indonesian, East Timor was given equal status to the other republics of Indonesia and a lot of migrants settled into the province in a policy of population control⁴⁴⁰.

According to Bertrand (2004: 141) in the 1980s FALINTIL/ FRETILIN was rebuilt by Xanana Gusmão and the movement increased lobbying to non-governmental organizations (NGOs) and foreign governments and mobilized youth and student underground in a strategy of non-violent resistance - for example when the Pope visited Indonesia in 1989 students protested with banners in front of the Dili cathedral.

Thus, authors note that, although in the early years of Indonesian occupation around 200,000 people died, it was only on 12 November 1991 when Indonesian military opened fire against pro-independence demonstrators at the Santa Cruz cemetery in Dili and these images happened to be broadcast by the international journalists present at the event that the profile of the resistance was raised and received international attention⁴⁴¹ (Martin 2001: 17). The East Timorese resistance was strengthened furthermore by the capture of José Alexandre ‘Xanana’ Gusmão in 1992 and his initial sentence to life imprisonment in 1993 (later on scaled down to 20 years

⁴³⁹ Loch (2007: 135) notes that the resistance (*funu*) was organized clandestinely in political, armed or underground groupings. In 1987 the *Conselho Nacional de Resistencia Maubere* (CNRM – National Council of Maubere Resistance) was established, whereby *Maubere* meant ‘ordinary people’ and was later renamed to the *Conselho Nacional de Resistencia Timorese* (CNRT - National Council of Timorese Resistance); In contrast to FALINTIL which led a guerrilla type of resistance on the ground and tried to free East Timor from within, FRETILIN and CNRT tried to seek an international solution to the East Timor conflict, predominantly from exile; the churches turned to spaces for civil resistance and in 1989 Pope John II visited Dili, a visit at which *funu* members demonstrated peacefully (Loch 2007: 135). Ballard (2008: 30) argues that in April 1998 the CNRT was formed and most importantly it brought FRETILIN and UDT together in the resistance movement, agreed on a common strategy and elected Xanana Gusmão as its President.

⁴⁴⁰ The population control in East Timor included activities such as the sterilization of East Timorese women whilst being told that they are being injected against tetanus (Bertrand 2004: 138).

⁴⁴¹ This event is often referred to as the Santa Cruz massacre, whereby 271 civilians were killed and 382 wounded of the 2,000 East Timorese gathered at the Santa Cruz cemetery in Dili to remember Sebastião Gomes, supposedly murdered two weeks before by the Indonesian security forces (Loch 2007: 135).

in prison), as well as the awarding of the Nobel Peace Prize to the East Timorese Bishop Carlos Filipe Ximenes Belo, the apostolic administrator of Dili and José Ramos-Horta, the exiled spokesman of the East Timorese resistance for their work 'toward a just and peaceful solution to the conflict in East Timor' (Martin 2001: 17, Loch 2007: 136).

According to authors the fall of President Suharto's regime on 21 May 1998 opened the way for a breakthrough in the tripartite discussions between the UN, Portugal and Indonesia with regards to East Timor which had started already in 1983 (Zaum 2007, Loch 2007). On 9 June 1998 President Habibie offered a special status to the people of East Timor within Indonesia⁴⁴², however it was not until half a year later that the East Timorese were given the right to vote on their future status - on 27 January 1999, when Australia withdrew its international support for the occupation of East Timor from Indonesia, that President Habibie announced a referendum, whereby the East Timorese were allowed to vote on their future in Indonesia (Zaum 2007: 182; Loch 2007: 136). The following section explains the popular consultation in East Timor.

6.2.3 The popular consultation in 1999

Following the announcement that a popular consultation was to be carried out in East Timor by Indonesian President Habibie, the human rights situation in East Timor rapidly deteriorated, and on 5 May 1999 Portugal and Indonesia signed an agreement mandating the UN SG to organize a 'popular consultation' in order to establish whether the East Timorese favoured autonomy within Indonesia or rejected it.

6.2.3.1 The 5 May Agreements

On 5 May 1999 three Agreements between the Governments of Indonesia and Portugal and the United Nations regarding the East Timor Question were signed. The General Agreement between the Governments of Indonesia and Portugal on the Question of East Timor entrusted the UN SG with the task of organizing and conducting a popular consultation to ascertain whether the East Timorese, both inside and outside East

⁴⁴² According to the special autonomy provisions Indonesia were to retain responsibility for foreign affairs, defence, finance and currency, whereas the East Timorese Regional Council were to legislate in other areas, as well as elect a governor and recommend members to the Special Autonomous Region of East Timor – SARET (A/53/951-S/1999/513, Appendix, Section A, Art. 2).

Timor, accept or reject the proposed constitutional framework, providing for special autonomy of East Timor within the Republic of Indonesia⁴⁴³. The General Agreement provided for the establishment of an ‘appropriate United Nations mission in East Timor’ to enable an effective carrying out of the popular consultation⁴⁴⁴ and also claimed that Indonesia shall be responsible for the maintenance of peace and security within East Timor and the carrying out of a free and fair election without ‘intimidation, violence or interference from any side’⁴⁴⁵.

The General Agreement envisaged two possible scenarios to the outcome of the popular consultation. In the case of an acceptance of the constitutional framework for ‘special autonomy’ within Indonesia, Art.5 of the General Agreement⁴⁴⁶ notes:

...the Government of Indonesia shall initiate the constitutional measures necessary for the implementation of the constitutional framework, and the Government of Portugal shall initiate within the United Nations the procedures necessary for the removal of East Timor from the list of Non-Self-Governing Territories of the General Assembly and the deletion of the question of East Timor from the agendas of the Security Council and General Assembly.

Whereas, should the East Timorese vote for independence and reject the constitutional framework suggested, Art.6 of the General Agreement⁴⁴⁷ notes:

... the Government of Indonesia shall take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976, and the Governments of Indonesia and Portugal and the Secretary-General shall agree on arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations. The Secretary-General shall, subject to the appropriate legislative mandate, initiate the procedure enabling East Timor to begin a process of transition towards independence.

Additionally, the Governments of Indonesia and Portugal reached an Agreement regarding the ‘Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot’, whereby the parties concerned agreed that the date for consultation will

⁴⁴³ The 5 May Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, states (A/53/951-S/1999/513, Art. 1):

[the governments of Indonesia and Portugal] request the Secretary-General to put the attached proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia to the East Timorese people, both inside and outside East Timor, for their consideration and acceptance or rejection through a popular consultation on the basis of a direct, secret and universal ballot.

⁴⁴⁴ A/53/951-S/1999/513, Art. 2.

⁴⁴⁵ A/53/951-S/1999/513, Annex I, Art. 3.

⁴⁴⁶ A/53/951-S/1999/513, Annex I.

⁴⁴⁷ Ibid.

be 8 August 1999 and both options for the ballot in the form of ‘accept’ or ‘reject’ the proposed special autonomy for East Timor were discussed⁴⁴⁸. The third 5 May Agreement 1999 referred to the maintenance of peace and security within East Timor by Indonesia and the police, and asserted that the Commission on Peace and Stability established in April in Dili should become immediately operational⁴⁴⁹.

Due to the fact that Art. 2 of the General Agreement on the Question of East Timor foresaw the establishment of a UN mission to conduct and organize the popular consultation in East Timor, in the following section attention is devoted to this UN mission.

6.2.3.2 UNAMET

On 11 June 1999 the UN SC adopted UN SCR 1246 to establish the United Nations Mission in East Timor (UNAMET), charged with the tasks to organize the popular consultation in East Timor. UNAMET was established until 31 August 1999 with the aim of organizing and conducting the popular consultation scheduled for 8 August 1999⁴⁵⁰. UNAMET was allowed to deploy only civilian police officers, containing a political, electoral and information component⁴⁵¹. UNAMET explained the consequences of rejecting autonomy as threefold: 1) Indonesia will end its links with East Timor, 2) East Timor will separate from Indonesia, 3) the United Nations will oversee East Timor’s transition towards Independence⁴⁵².

The ballot⁴⁵³ took place on 30 August 1999 and according to UN SG Kofi Annan the registered voters in East Timor and around the world were 451,792 (98,6 per cent voter turnout) and the results of the ballot were announced as follows: 94,388 or 21,5 per cent in favour and 344,580 or 78,5 per cent against the proposed special autonomy⁴⁵⁴. In his statement on 3 September 1999 Kofi Annan welcomed the ‘historic set of agreements’ between Portugal and Indonesia to ‘resolve the long-standing issue of East Timor’ and suggested that after 24 years of conflict East Timor ‘now stands on the threshold of what we all hope will be a process of orderly and

⁴⁴⁸ A/53/951 – S/1999/513, Annex II.

⁴⁴⁹ Ibid, Annex III.

⁴⁵⁰ S/RES/1246, Para. 1.

⁴⁵¹ Ibid, Para. 4.

⁴⁵² Ibid.

⁴⁵³ Martin (2001: 67) notes that on 30 August 1999 – the day of the ballot – as many as 50 percent of all registered voters were present when the polling began at 6:30 a.m.

⁴⁵⁴ SG/SM/7119.

peaceful transition towards independence'⁴⁵⁵. UN SG Annan also called on the Government of Indonesia to 'maintain law and order in the territory'⁴⁵⁶.

However, due to the fact that Indonesia was endowed with the responsibility to maintain law and order in East Timor and UNAMET was allowed to have only civilian police, shortly after the announcement of the ballot results by UN SG Kofi Annan, violence broke out in the territory of East Timor.

6.2.3.3 Outbreak of violence

Following the declaration of the East Timor popular consultation results by UN SG Kofi Annan on 3 September 1999, an outbreak of violence ensued, carried out by the Indonesian military and paramilitary groups. According to Zaum (2007: 183) pro-Indonesian militias supported by the Indonesian army⁴⁵⁷ and police killed an estimated 2,000 East Timorese and forcibly deported 230,000 to refugee camps in West Timor (one fourth of the population), whilst displacing internally several hundred thousand.

A report of the East Timorese Commission for Reception, Truth and Reconciliation in 2006 (CAVR – *Comissão de Acolhimento, Verdade e Reconciliação*) (quoted in Loch 2007: 137) comments on the post-referendum violence in East Timor:

The Indonesian military and militia are known to have killed between 1,200 and 1,500 East Timorese in 1999, 900 of these after the ballot. Between them they murdered 400 in mass killings, and the remainder in individual killings. [781] victims suffered brutal deaths, many were cut down with machetes, and of those that escaped death many were mutilated and continue to suffer health problems ... torture, sexual violence and forcible transfer of the population occurred across the territory ...

According to Martin (2001: 25) paramilitary pro-Indonesian groups begun to move against independence supporters long before the ballot took place - from January to April 1999 independence activists were 'seized, tortured, and ill treated', the CNRT leadership was forced to move underground. The worst massacre since Santa Cruz occurred in Liquiça on 6 April 1999 – whereby at least 30 were killed and over 2,000 sought shelter in a church in order to escape the violent incidents (Martin 2001: 25).

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Indonesia operated through paramilitary groups, amongst the most well-known were Halilintar (Thunderbolt, in Bobonara district), Tim Saka (Baucau), Tim Alfa (Lautem), Besi Merah Putih (Iron Red and White, Liquiça), Mati Hidup Demi Integrasi/ Mahidi (Live or Die for the Sake of Integration, Ainaro), Laksaur (Cova Lima) and Aitarak in Thorn and Dili (Martin 2001: 24).

According to Wolff (2006: 159-161) the referendum results unleashed deadly killings in East Timor, whereby 75 per cent of the population was displaced and 70 per cent of all buildings, homes, schools, etc were destroyed, GDP dropped by 40 per cent and inflation increased with 10 per cent.

Smyrek (2006: 122) states that with the aftermath of the popular consultation in East Timor it was clear that the UN had committed a 'brutal blunder' by providing only technical assistance for the referendum and leaving the matters of security and the implementation of the results in Indonesian hands, for the events that followed the referendum were an 'orgy of violence', murder, torture, looting and raping, devastation of the infrastructure and displacement of over half of the civilian population.

Thus, the UN TA in East Timor embarked on massive post-conflict reconstruction. UN SCR 1264 (S/RES/1264) welcomed the successful conduct of the popular consultation on 30 August 1999 and condemned the acts of civilian violence in East Timor, authorizing the establishment of a multinational force under a unified command structure - INTERFET.

6.3 INTERFET

Due to the violence that followed the popular consultation, the International Force for East Timor (INTERFET) was set up, similar to the Kosovo Force (KFOR). Both of these forces were set up in 1999 to provide assistance after brutal killings and massacres. However, in contrast to KFOR which is still operating in Kosovo, INTERFET was only set up for a period of five months – from 20 September 1999 to 28 February 2000, when it handed over power to UNTAET. Similar to KFOR, INTERFET was established by a UN SC mandate, UN SCR 1264, calling for a multinational force to restore peace and security to East Timor following the conduct of the popular consultation in the region. The largest contributors to troops were Australia and New Zealand and in contrast to KFOR, after the establishment of a UN TA in East Timor, INTERFET handed over the command of military operations to the TA. Thus, unlike KFOR, INTERFET was not charged with administrative and civilian functions, but had only military ones.

For Smith & Dee (2003: 18) the UN intervention in East Timor comprised three distinct phases and missions: 1) UNAMET and the popular consultation (ballot),

2) INTERFET to restore and maintain security until the UN can restore and assemble a peacekeeping force and 3) UNTAET to prepare East Timor for independence. Attention will now be turned to the third phase of UN involvement in East Timor.

6.4 UNTAET (1999 – 2002)

Authors have noted that the legal basis for the UN intervention in East Timor has been twofold: 1) a resolution passed by the UN SC under Chapter VII of the UN Charter and 2) a declaration of the titular sovereign Portugal that it renounces its rights over East Timor in favour of the UN (Smyrek 2006: 125). East Timor was, thus, a case of delayed decolonization and, in contrast to Kosovo, the TA comprised a civilian and a military branch. The United Nations Transitional Administration in East Timor (UNTAET), was established under Chapter VII of the UN Charter on 25 October 1999 by adopting UN SCR 1272, which envisaged that UNTAET ‘will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice’⁴⁵⁸. The functions of UNTAET are described as follows⁴⁵⁹:

- to provide security and maintain law and order throughout the territory of East Timor;
- to establish an effective administration;
- to assist in the development of civil and social services;
- to ensure the delivery and coordination of humanitarian assistance, rehabilitation and development assistance;
- to support capacity-building for self-government;
- to assist in the establishment of conditions for sustainable development.

UNTAET is envisioned to have three main components: governance and public administration, humanitarian assistance and emergency rehabilitation, and a military component⁴⁶⁰. The Transitional Administrator of UNTAET will be the Special Representative to the Secretary-General and will be endowed with all responsibilities

⁴⁵⁸ S/RES/1272, Para. 1.

⁴⁵⁹ Ibid, Para. 2.

⁴⁶⁰ Ibid, Para. 3.

for the work of the United Nations in East Timor, having the power to ‘enact new laws and regulations, and amend, suspend or repeal existing ones’⁴⁶¹.

Thus, UNTAET seemed to be endowed with much more power than UNMIK and any of the peacebuilding missions that preceded it, for it combined both the military and civilian components under one umbrella and delegated much more responsibility to the SR SG. However, this study argues that the international character of UNTAET and its mandate, which distinguished it from UNMIK, are only one level of analysis of the success of a TA. Similar to the Kosovo case, attention is also devoted to the national and local factors that have led to a faster devolution of power from UNTAET to the East Timorese.

The next section illustrates how the absence of conflicting ethnic interests in East Timor enabled a speedy process of devolution of administrative powers to the local population and resulted in an unimpeded achievement of all the objectives set in UN SCR 1272.

6.5 Conflicting ethnic interests

It has already been pointed out that both Kosovo and East Timor represent ethnically heterogeneous societies. In fact, East Timor represents a more ethnically heterogeneous society than Kosovo. It has been pointed out that some of the most important ethnic groups present in East Timor are the Tetum, Mambae, Tukudede, Maubara, Liquiça, Galoli, Kemak, Baikeno, Fataluku, Lospalos and Makasese, in addition there have also been East Timorese of mixed (Portuguese and East Timorese) origin – the mestiços⁴⁶². However, despite its ethnic heterogeneity, compared to Kosovo, there have been low conflicting ethnic interests in East Timor. Most scholars agree that a weak collective identity is present in East Timor.

6.5.1 Collective national identity

Scholars refer to the existence of a weak collective identity in East Timor, shaped by the common struggle against Indonesian occupation and a common experience of Portuguese colonialism. Kehi (quoted in Loch 2007: 55) states that:

⁴⁶¹ Ibid, Para. 6.

⁴⁶² Data based on Wikipedia, available at http://en.wikipedia.org/wiki/East_Timor/Demographics

Over the years we, the East Timorese, have been challenged to make a choice that defines our collective identity: to resist or not to resist. To resist is to be, not to resist is not to be. To resist against the evil force is to maintain and gain our identity and dignity, not to resist is to perish, to lose our identity, ourselves as free and equal individuals. Under the leadership of Nicolao Lobato, Monsignor Martinho da Costa Lopez, Xanana, Jose Ramos Horta, Bishop Belo, Taur Matan Ruak, and many others, the East Timorese, with moral courage, have chosen to resist, although the price is not cheap. We resist, therefore, we are.

Loch (2007: 55) defines East Timorese collective identity in relationship to *funu*⁴⁶³ (In Tetum: both resistance and war) and in relationship to the collective enemy, Indonesia (from 1975-1999). Moreover, despite several centuries of Portuguese colonialism Smith & Dee (2003: 36) note that in relation to the colonial power Portugal there was generally little animosity⁴⁶⁴. Smyrek (2006: 119) has also noted that East Timor is inhabited by people that are culturally and linguistically closer to the Melanesians of Papua New Guinea and the Malays than the peoples of West Timor and Java. Thus, despite the geographical proximity with West Timor and Indonesia, the cultural and linguistic background of the East Timorese has been different, enabling easier resistance against the Indonesian occupation.

The former President of East Timor Xanana Gusmão has often drawn on the collective identity of the East Timorese – on their heroic resistance and sacrifice, their pain and suffering – all criteria that draw on the collective experiences of the East Timorese people and their identification as a result thereof. Loch (2007: 21) quotes Xanana Gusmão as having said in 1999:

Many have talked and written about Timor. About the pain, the suffering and death. About the atrocities, bombardments, the military operations, and the occupying soldiers. Many have written about the heroic resistance of the people, about the sacrifice of the guerrillas, about the fortitude of their representatives.

Thus, Loch (2007: 22-5) rightly observes that after 24 years of Indonesian schooling and 500 years of Portuguese colonization, the question of the East Timorese identity is linked to the resistance of the East Timorese and their perception as warriors, the resistance contributed to the nation and that the resistance created emotion – pride and

⁴⁶³ Smith & Dee (2003: 36) also refer to *funu* (struggle/ conflict) to describe a central element of East Timorese culture.

⁴⁶⁴ The largest rebellion occurred in 1911-1912 and later in 1959 with the uprising of Viqueque, which was quickly suppressed, signifying little evidence of a 'strong desire for independence' (Smith & Dee 2003: 36).

stronger attachment to the nation – pride to be a hero (*asuwain*). Loch (2007: 27) examines the East Timorese identity as interplay between three powerful forces – the traditional, the modern and the Catholic dimensions. For Ballard (2008: 138) good governance in East Timor was linked to a few essentially unifying cultural factors: the Catholic Church, the value of the Tetum language, the ethnic solidarity of the people. Actually, if one considers the three factors mentioned by Ballard, one can easily conclude that they are all criteria of identity – faith, language and ethnicity and thus, one can also conclude that according to Ballard East Timor had a unified collective identity.

Loch (2007) points to the fact that despite that 97% of the population identify themselves primarily as Roman Catholics, in reality religion is constituted of and conceptualized in a traditional manner, whereby the role of the Church is seen more in terms of resistance and keeping the East Timorese identity alive rather than in terms of pure religion. Thus, the main component of the East Timorese identity seems to have been the question of resistance. The East Timorese identity and its redefining after the 24-year conflict has also been aided by the establishment of a Commission for Reception, Truth and Reconciliation.

6.5.2 Commission for Reception, Truth and Reconciliation

Despite the existence of low conflicting ethnic interests within the East Timor society, an East Timorese Commission for Reception, Truth and Reconciliation (CAVR) was established to deal with the past wrongdoings against the East Timorese on behalf of Indonesia, as well as to reconcile pro-Indonesian militias within East Timor with CNRT⁴⁶⁵. CAVR was established on 13 July 2001 with the functions of truth-seeking, community reconciliation and making recommendation to the Transitional Administrator⁴⁶⁶. The Commissioners were appointed by the Transitional Administrator⁴⁶⁷. Due to the creation of CAVR a public record of human rights abuses since 1975 has been created to foster reconciliation between community members and deal with low-level offences committed in 1999⁴⁶⁸.

⁴⁶⁵ UNTAET/REG/2001/10.

⁴⁶⁶ UNTAET/REG/2001/10, Art.3.2.

⁴⁶⁷ Ibid, Art.4.2.

⁴⁶⁸ S/2001/42, Para. 26.

The spirit of forgiveness and community has also been promoted by both the Presidents of East Timor and Indonesia. Although the church and numerous NGOs demanded the setting up of an International Criminal Tribunal for Indonesia, Xanana Gusmão and the Indonesian President Yudhoyono decided mutually to pursue not justice but friendship and in August 2005 the Commission of Truth and Friendship was set up (KVA – *Komisaun Verdade e Amizade*) to investigate the wrongdoings of the Indonesian army in East Timor particularly after the ballot in 1999 and in so doing KVA aims to achieve friendship and cooperation between both governments with an emphasis on inter-communal reconciliation⁴⁶⁹.

Thus, the spirit of friendship and reconciliation has been promoted in East Timor. Nonetheless, four years after the departure of UNTAET violence occurred in the newly-established Republic of Timor-Leste, raising questions not only about the success of the UN TA, but also with regard to the success of reconciliation efforts.

6.5.3 Violence post-UNTAET

A disappointing event post-independence, signifying a perhaps too quickly celebrated success of UNTAET, has been the outbreak of violence in East Timor. Although this violence broke out in 2006 and it was not during UNTAET, which ended in 2002, attention is dedicated to this conflict. The motives underlying the violence have been described as non-ethnic; rather the violence has been viewed in terms of a conflict of traditional structures against modernity, the need for resistance and above all as the result of soaring unemployment amongst the youth⁴⁷⁰. Scambary et al. (2006: 1) attribute the April 2006 violence in the Democratic Republic of Timor-Leste (RDTL – Tetum: *Republika Demokratika Timor Loro Sa'e*, Portuguese: *República Democrática Timor-Leste*) to the 'involvement of large numbers of young, marginalized males' who have felt disenfranchised due to factors such as unemployment, security concerns, lack of access to education. Above all, Scambary et al. (2006) point to the fact that the violence was one primarily between martial groups and involved easterners killing westerners due to the fact that after the 1999 eviction of the Indonesian civil service, property disputes arose as to whom the houses belonged, a lot of eastern families illegally settled in the deserted houses and thus provoked violence on behalf of the

⁴⁶⁹ Based on Wikipedia, available at http://en.wikipedia.org/wiki/Indonesia-Timor_Leste_Commission_of_Truth_and_Friendship

⁴⁷⁰ Refer to Loch (2007) and Mboeik (2007) for further detail.

westerners, also most of the easterners were known to be resistance fighters who accused the westerners of having cooperated with the Indonesian militia as traitors⁴⁷¹. Apart from the predominantly militant martial groups and clubs fighting, there have also been a number of ex-FALINTIL officers who felt excluded due to the lack of posts in the new police service and army⁴⁷² (Scambary et al. 2006: 4). Thus, in April 2006 500 people were killed and over 20,000 fled their homes as riots and fierce fighting between government troops and disaffected military troops broke out⁴⁷³. Outbreaks of violence followed in February and March 2007 and currently a renewed United Nations Integration Mission in Timor-Leste (UNMIT, 2006 – present) is being institutionalized.

Thus, the current developments in East Timor have pointed to the relativity of success of a TA and, above all, to its staged nature. The April 2006 violence in the Democratic Republic of Timor-Leste has proven that it is not enough to achieve local ownership and hand over power to the local population in order to be successful as a TA – these achievements need also to be sustained in the future.

6.5.4 Summary

Having discussed the collective national identity in East Timor and in line with the propositions of this study, research has found that conflicting ethnic interests have been low in East Timor in the period of 1999 – 2002. The findings with regard to the criteria determining the existence of conflicting ethnic interests are summarized in table nine.

⁴⁷¹ Another major reason for violence have been the territorial fights about who controls the important trade routes and markets, which explains why important markets such as Comoro and Talibesse have been destroyed (Scambary et al. 2006: 3).

⁴⁷² Scambary et al. (2006: 4) point to different disenfranchised military groups active in different areas of Timor-Leste: *SF-75* has been involved in violence in the Matadouro and Caicoli area, whereas the *Sagrada Familia* group, led by ex-FALINTIL commander Cornelio Gama (currently known as the L-7) has been accused of violently attacking the police station in Baucau, the *Popular Council for the Defence of the Democratic Republic of Timor-Leste* (CPD-RDTL) has been accused of attacks in Dili. Colimau 2000 is another group alleged to have links with the former militia – the existence of such groups coupled with the high unemployment rates (over 50%) makes it easier for the disaffected, marginalized youth to comprise the ‘bulk of the rioting mobs’ (Scambary et al. 2006: 4). The CPD-RDTL group claims to be the real FRETILIN and states that Timor-Leste has been independent since its original proclamation by FRETILIN in 1975 and should, therefore, adopt all substance and symbols from that time, it rejects the legitimacy of UNTAET and has also rejected the legitimacy of the current Timor-Leste government since it views it of being comprised by FRETILIN leaders who lived in exile in the last 24 years; it also refuses to register as a political party and opposes the use of Portuguese, however it is estimated that the group has some 6,600 supporters with strongholds in Dili and Baucau (Scambary et al. 2006: 12).

⁴⁷³ Wikipedia 2007.

Table 9: Conflicting ethnic interests in East Timor (1999 – 2002)

Conflicting ethnic interests	East Timor (UNTAET 1999-2002)
I. Minimal participation of ethnic minorities in local elections	-
II. Minimal representation of ethnic groups in government	-
III. Occurrence of large-scale ethnic violence during UN TA	-
IV. Existence of parallel judiciary and government institutions	+
V. Division of the region according to ethnic lines	-
VI. Segregation of the public service sector	-
VII. Formation of political parties according to ethnic lines	-
VIII. Impaired Freedom of Movement because of minority security fears	-
IX. Lack of effective reconciliation	-
X. Discrimination against ethnic groups	-

Sources: UN SG reports on UNTAET⁴⁷⁴, author: D.C.S.

The table indicates that conflicting ethnic interests in East Timor during the UN TA have been low. In the following section the ten criteria, used to determine the existence of conflicting ethnic interests are elaborated on in an East Timorese context.

- I) In August 1999 roughly 482 000 voters voted in a referendum for independence: 78,5% were in favour, 21,5% supported autonomy within Indonesia, voter turnout was extremely high, more than 98 per cent⁴⁷⁵. In the elections on 30 August 2001 for a Constituent Assembly, voter turnout has also been really high 91,3%⁴⁷⁶. However, CPD-RDTL and BRTT (East Timor People's Front) opposed the 2001 election, claiming that East Timor already became independent in 1975 and already has a constitution, refusing to recognize the legitimacy of the UNTAET mandate⁴⁷⁷.
- II) There have been differences noted between CNRT, on the one hand, and its two major components FRETILIN and UDT, on the other hand. There have also been political parties boycotting the CNRT, such as the CPD-RDTL

⁴⁷⁴ SG/SM/7119, S/2000/53, S/2000/738, S/2000/1105, S/2001/42, S/2001/436, S/2001/719, S/2001/983, S/2002/80, S/2002/432, McCloskey 2000, Hohe 2004, Mboeik 2007.

⁴⁷⁵ SG/SM/7119.

⁴⁷⁶ S/2001/983, Para. 4.

⁴⁷⁷ S/2001/436, Para. 7, S/2001/719, Para.4.

and violence between CPD-RDTL and FRETILIN supporters has occurred⁴⁷⁸. However, these differences have not been based on an ethnic allegiance to different groups, but rather on different visions of independence of East Timor.

- III) There have been incidents of group clashes in Baucau and Dili in January 2000, whose members have been identified as belonging to two rival groups, as well as incidents on the West-East border⁴⁷⁹. However, the overall security situation has been stable and these clashes have been remote from any large-scale violence as witnessed in Kosovo in 2004.
- IV) A traditional system of conflict settlement and defence of borders exists in East Timor (Hohe 2004: 305). This traditional system has undermined the proper functioning of the judiciary in East Timor⁴⁸⁰. In rural communities the majority of the Timorese continue to apply traditional legal paradigms⁴⁸¹ that emphasize the survival and welfare of the community rather than the rights of the individual; both Portuguese and Indonesian law coexisted with rather than superseded traditional legal practices (Zaum 2007: 202).
- V) Muslim migrants from Indonesia settled in the South during the 24 years of Indonesian occupation. However, there has been no division of the region according to ethnic lines. Traditionally the resistance formed in the eastern part of the island and the pro-autonomy supporters resided in the western part⁴⁸², however, these divisions have been natural and not deliberate as is the case in Kosovo.
- VI) None reported.

⁴⁷⁸ S/2001/42, Paras.6-7.

⁴⁷⁹ S/2000/53, Paras. 16-18.

⁴⁸⁰ For Zaum (2007: 195) judicial reform has been the 'Achilles heel' of the international administration in East Timor since the judicial system did not need to be reformed but built from scratch.

⁴⁸¹ Zaum (2007: 203) even claims that today the traditional legal paradigm and not the one promulgated by UNTAET is the most important legal paradigm in the country; traditional law was simply dismissed as 'folklore' by UNTAET officials. Aspects of traditional Timorese law are incompatible with international human rights standards, such as in the sphere of domestic and sexual violence; in the case of rape (sexual violence) traditional law does not foresee a prison sentence for the perpetrator, but rather implies that he should either marry the woman or pay compensation to the family as her reputation has been damaged and she cannot find a husband; domestic violence is also not dealt with in rural societies since the imprisonment of the husband would deny the family the breadwinner, there has been, however, no international attempt to reconcile these two legal orders by prescribing to the traditional field dealing with minor offences (Zaum 2007: 203).

⁴⁸² See Pouyé (2005).

- VII) UDT, FRETILIN and APODETI as main political parties in East Timor were formed around differences concerning the degree of independence/ autonomy sought (McCloskey 2000: 3), but not on the basis of ethnic allegiance.
- VIII) In all the years of UNTAET involvement in East Timor the security situation both within East Timor and on the border to West Timor has been described as ‘good’ and ‘overall stable’⁴⁸³.
- IX) UNTAET encouraged effective reconciliation between CNRT and pro-Indonesian militias in East Timor⁴⁸⁴. This reconciliation was further strengthened by the establishment of a Commission for Reception, Truth and Reconciliation (CAVR) on 13 July 2001⁴⁸⁵. The reconciliation efforts by East Timor have been treated as having a direct impact on the return of refugees from West Timor, who have been readily accepted by communities in East Timor, additionally an *ad hoc* criminal tribunal was created to deal with crimes against humanity, committed after the ballot on 30 August 1999⁴⁸⁶. In July 2001 Gusmão met with militia leaders in the West Timor border and Bishop Nascimento of Baucau visited West Timor in May 2001 in the name of friendship and reconciliation⁴⁸⁷. Thus, East Timor’s leadership openly supported reconciliation in the region, a trait that has been lacking in Kosovo.
- X) During UNTAET there has been violent opposition encountered by CPD-RDTL who split from FRETILIN and CNRT in the Suasi area⁴⁸⁸. In 2000 threats against ethnic and religious minorities have also been reported – on 8 June 2000 the Protestant churches in Ermera and Aileu were burned and the mosque in Dili was attacked⁴⁸⁹. Yet despite these ‘sporadic attacks’, the overall situation in East Timor has remained ‘stable’⁴⁹⁰. Post-UNTAET there was discrimination reported on the basis of whether one belonged to

⁴⁸³ S/2001/436, Para. 19, S/2001/42, S/2000/53.

⁴⁸⁴ S/2001/42, S/2000/53.

⁴⁸⁵ UNTAET/REG/2001/10.

⁴⁸⁶ S/2001/436, Para. 18.

⁴⁸⁷ S/2001/719, Para. 28.

⁴⁸⁸ S/2000/738, Para.5.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid., Para. 41.

the East or West of East Timor, however, these divisions were not visible during the UN TA rule⁴⁹¹.

Thus, even though post-UNTAET renewed violence occurred in the Democratic Republic of Timor-Leste, the Reports of the UN SG on UNTAET from 1999 – 2002 do not indicate the existence of conflicting ethnic interests in East Timor that blocked the working and functioning of the TA, on the contrary, UNTAET was always described as a success story by the UN right until its very end, 20 May 2002, when East Timor achieved independence. In the following section, the local participation of the East Timorese and their enthusiasm to achieve self-government and independence is described.

6.6 Local participation

This study argues that due to a collective identity and a clearly-stated mandate and objectives, the levels of local participation witnessed in East Timor have been much higher than in Kosovo. As a motivation to include the popular will in the transitional peacebuilding process might serve the fact that unlike UNMIK, UN SCR 1272 stressed ‘the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions’⁴⁹².

6.6.1 Degree and pace of devolution of institutions

UN SCR 1272 from 25 October 1999, establishing UNTAET, attached three main components to UNTAET: a governance and public administration component with up to 1,640 officers, a humanitarian assistance and emergency rehabilitation component, and a military component to succeed INTERFET. The military component was also foreseen as the biggest one, comprising up to 8,950 troops and 200 military observers⁴⁹³. UNTAET was vested with ‘overall responsibility for the administration

⁴⁹¹ ICG Report No. 143 (2008) notes that the 2006 crisis began by complaints of 159 soldiers in January and their petition to the President, Xanana Gusmão, as supreme army commander, complaining of discrimination against westerners (*loromonu*) and in favour of easterners (*lorosae*).

⁴⁹² S/RES/1272, Para. 8.

⁴⁹³ Ibid, Para.3.

of East Timor empowered to exercise all legislative and executive authority, including the administration of justice...'⁴⁹⁴ Since the creation of sustainable institutions was awarded to the governance and public administration (GPA) component of UNTAET, the next section examines the working of the GPA.

6.6.1.1 Governance and Public Administration

The Governance and Public Administration structure (GPA) has been established to 'implement public policy and deliver essential services'⁴⁹⁵. Interestingly, GPA notes⁴⁹⁶:

A key objective is to ensure that the East Timorese themselves become the major stakeholders in their own system of governance and public administration, first by intensive consultation through NCC [National Consultative Council] and district advisory councils, and then through the early and progressive development of their capacity to carry out all necessary functions.

Thus, even though both TAs provided for the establishment of consultative councils (KTC in Kosovo and NCC, NC in East Timor), the degree and pace of devolution of transitional institutions in East Timor was much quicker than that witnessed in Kosovo for two main reasons: firstly, due to the absence of conflicting ethnic interests and contradictory and irreconcilable positions within society and secondly, due to the concretely stipulated goal of achieving independence. Thus, if Kosovo's level of local participation was directly connected to the question of the future status of the province, in East Timor there was no such hindering uncertainty and obstruction.

Close cooperation with the East Timorese was promoted also by an independent Public Service Commission (established on 20 January 2000) to oversee the selection and recruitment of an East Timorese civil service⁴⁹⁷.

Moreover, in contrast to Serbia and its unwillingness to cooperate with the majority of Kosovars on the final status issue, Indonesia accepted the outcome of the ballot in East Timor, claiming independence. Due to all of the above-mentioned factors the process of peacebuilding went relatively quickly for East Timor; only eight months after the establishment of UNTAET –in July 2000 – an East Timor Transitional

⁴⁹⁴ S/RES/1272, UNTAET/REG/1999/1.

⁴⁹⁵ S/2000/53, Para. 40.

⁴⁹⁶ Ibid, Para. 41.

⁴⁹⁷ UNTAET/REG/2000/3.

Administration (ETTA) took over power of one of the major UNTAET pillars, that of Governance and Public Administration and, thus, achieved a process of “Timorization” (Smith & Dee 2003: 64-65) by establishing mixed levels of government with both international participation and local leaders. Only two months later an all Timorese Transitional Government was confirmed (Smith & Dee 2003: 66), inevitably paving the way for the successful achievement of independence⁴⁹⁸.

6.6.1.2 East Timor Transitional Administration

In mid-July 2000 was established the Cabinet of the Transitional Government of East Timor, which was vested with executive authority in the respective portfolios assigned by the Transitional Administrator⁴⁹⁹ with the aim to ‘formulate policies and programs for the government of East Timor and to supervise the East Timor Administration’⁵⁰⁰. The members of the Cabinet were appointed by the Transitional Administrator following a consultation with the respective groups in East Timor⁵⁰¹. In mid-July 2000 UNTAET increased the direct participation of East Timorese in government, whereby of the eight portfolios⁵⁰² created four were assigned to East Timorese and the other four to senior UNTAET staff members⁵⁰³.

On 7 August 2000 was established the East Timor Transitional Administration (ETTA) to integrate East Timorese into all major decision-making areas within the Administration. In the TA Cabinet East Timorese were holding towards the beginning of 2001 five cabinet portfolios out of nine (foreign affairs, internal administration, infrastructure, economic affairs and social affairs)⁵⁰⁴. Thus, the Cabinet was seen as an ‘effective and cohesive instrument of government, directing the work’ of ETTA⁵⁰⁵.

⁴⁹⁸ After independence the official name of the Democratic Republic of Timor-Leste (in Portuguese República Democrática de Timor-Leste, in Tetum Repúblika Demokrátika Timor Lorosa’e) was adopted. For these reasons and due to the fact the Democratic Republic of Timor-Leste was established only after independence, the present study refers to ‘East Timor’ as a region governed by UNTAET, and not a fully-independent country.

⁴⁹⁹ UNTAET/REG/2000/23, Art. 1.3.

⁵⁰⁰ Ibid, Art. 4.1.

⁵⁰¹ Ibid, Art. 2.1.

⁵⁰² The eight portfolios created in July 2000 included internal administration, infrastructure, economic affairs, social affairs, finance, justice, police and emergency affairs, and political affairs (S/2000/738, Para. 3).

⁵⁰³ S/2000/738, Para. 3.

⁵⁰⁴ S/2001/42, Paras. 9 & 16. On 19 October 2000 the Cabinet portfolios assigned to East Timorese members of the NC increased to five, after José Ramos-Horta was sworn in as a cabinet member for foreign affairs, thus the East Timorese now had a majority of the nine cabinet portfolios.

⁵⁰⁵ S/2001/719, Para. 8.

It was suggested that on 15 September 2001 a new and enlarged Cabinet of National Unity, composed entirely of East Timorese be established to see East Timor through to independence⁵⁰⁶. Generally the progress made by ETTA in 2001 has been classified as 'steady' towards achieving targets in civil service recruitment and training and adopting legislation in different areas⁵⁰⁷.

On 5 July 2001 Australian and East Timorese Cabinet ministers reached the Timor Sea Agreement, which provided East Timor with 90% of the oil and gas production of the area covered under the 1989 Australia-Indonesia Timor Gap Treaty⁵⁰⁸. It is also noteworthy, that all 13 district administrators and their deputies in East Timor are Timorese⁵⁰⁹.

Thus, in terms of the creation of institutions in Kosovo and East Timor great similarities can be identified, both with regard to the functions of the institutions and their chronological development. ETTA corresponded to JIAS in Kosovo and ETPA to PISG.

6.6.1.3 East Timor Public Administration

The East Timor Public Administration (ETPA) was established in September 2001, together with a Council of Ministers to represent a public legal entity and represent the Transitional Government of East Timor⁵¹⁰. Thus, ETPA replaced ETTA and the Council of Ministers replaced the Cabinet. By the end of 2001 91,2% of the civil servants in ETPA had already been recruited⁵¹¹.

6.6.1.4 National Consultative Council

Soon after his arrival in East Timor, the SR SG Vieira de Mello, on 16 November 1999, Vieira de Mello contacted Xanana Gusmão in order to involve the East Timorese in the administration of the territory⁵¹². Based on these discussions the National Consultative Council (NCC) was established as a 'primary mechanism through which the representatives of the East Timorese people' may participate in the decision-

⁵⁰⁶ Ibid, Para.9.

⁵⁰⁷ Ibid, Para. 11.

⁵⁰⁸ Ibid, Para. 12.

⁵⁰⁹ Ibid, Para. 13.

⁵¹⁰ UNTAET/REG/2001/28.

⁵¹¹ S/2002/80, Para. 13.

⁵¹² S/2000/53, Para. 4.

making process⁵¹³. NCC included seven representatives from CNRT, including Mr. Gusmão, three seats were awarded to political groups outside CNRT that had supported autonomy⁵¹⁴, one seat to the Church and four seats to UNTAET, including the Transitional Administrator, equalling a total of 15 seats⁵¹⁵. Thus, right from the start the East Timorese had a majority in the NCC. The members of the NCC were appointed by the Transitional Administrator⁵¹⁶. NCC was authorized to create joint sectoral committees (on macroeconomics and finance, civil service, local administration, infrastructure, agriculture and health and education) that can offer advice to the TA in its various fields⁵¹⁷. The Report of the SR SG Vieira de Mello also notes that the inclusion of pro-autonomy groups in the NCC has been an important step towards reconciliation⁵¹⁸. Chesterman (2004b: 94) illustrates that only half a year after the establishment of UNTAET, on 5 April 2000, SRSV Sergio Vieira de Mello announced the appointment of East Timorese deputy administrators to operate under the 13 international administrators in East Timor.

6.6.1.5 National Council

On 14 July 2000 the National Council (NC) was created to replace the NCC with an expanded membership of 33 members, all of which were to be Timorese (one from each of the 13 districts in East Timor, 7 from political parties within CNRT, three from other political parties and one each representing youth, students, NGOs, farmers, labour, business, the Catholic Church, the Protestant Church and the Muslim community, as well as from the professions⁵¹⁹. On 23 October 2000 the NC was expanded to 36 members to include altogether 13 members from the districts, 7 from civic organizations, 13 from political parties and three from religious groups and the standing committees of the NC were expanded to seven, corresponding to cabinet portfolios⁵²⁰. The members of the NCC were to be appointed by the Transitional

⁵¹³ UNTAET/REG/1999/2, S/2000/53, Para. 4.

⁵¹⁴ Forces of the East Timorese People (BRTT) and the Timorese National Party (PNT) took their seats at the NCC, whereas negotiations were underway with the Forum for Unity, Democracy and Justice (FPDK); the inclusion of pro-autonomy parties in NCC represents a gesture which strengthened reconciliation (S/2000/53, Para. 4).

⁵¹⁵ S/2000/53, Para. 4, UNTAET/REG/1999/2, Art.2.2.

⁵¹⁶ UNTAET/REG/1999/2, Art. 2.5.

⁵¹⁷ Ibid.

⁵¹⁸ S/2000/53, Para. 5.

⁵¹⁹ S/2000/738, Para. 3.

⁵²⁰ S/2001/42, Para. 8.

Administrator following a consultation with the members of the NCC and their nominations if appointees⁵²¹. Thus, similar to Kosovo NC constituted of 36 members, however, unlike in Kosovo, the NC was a much more unified organ, whereas in Kosovo soon after the establishment of KTC parallel Serb National Councils (SNCs) had mushroomed.

The decision-making and decision-taking unity of NC could be witnessed on 12 December 2000 as it endorsed the outlines of a proposed calendar to seek independence for East Timor by the end of 2001; this calendar was proposed by Gusmão and was a result of a growing consensus in NC, the stages preceding independence were determined as follows: elections for a Constituent Assembly, drafting of a constitution by the Constituent Assembly and an establishment of a government (which might be the Constituent Assembly itself)⁵²². Thus, the impulse towards independence and a speedier self-government within East Timor came not so much from UNTAET, as from the decisions of NC (the East Timorese themselves). In a parallel action against the mixed administration, the East Timorese expressed that they did not feel adequately represented in a system of a mixed public administration, and in October 2000 Gusmão openly expressed the collective frustration of the people with regards to the process of Timorization (quoted in Chesterman 2004b: 96):

We are not interested in a legacy of cars and laws, nor are we interested in a legacy of development plans for the future designed by [people] other than East Timorese. We are not interested in inheriting an economic rationale which leaves out the social and political complexity of East Timorese reality. Nor do we wish to inherit the heavy decision-making and project implementation mechanisms in which the role of the East Timorese is to give their consent as observers rather than the active players we should start to be.

Chesterman (2004b: 97) describes how the threat of resignation was often used as a political tool for pressure on the internationals by the Timorese Cabinet Ministers who shared Gusmão's view until a timetable was proposed by Gusmão to achieve independence and elect a Constituent Assembly, responsible for the drafting of a Constitution and a legislative body that would become East Timor's legislature after independence. Thus, in contrast to Kosovo, whose political leaders could not represent such a unified position of the Kosovars, East Timor under the leadership of Gusmão turned self-governance from a distant dream into a reality.

⁵²¹ UNTAET/REG/2000/23, Art. 3.3.

⁵²² *Ibid.*, Paras. 2-3.

6.6.1.6 The Constituent Assembly

On 16 March 2001 it was agreed that the elections for a Constituent Assembly for East Timor, charged with the task of preparing a Constitution ‘for an independent and democratic East Timor’ were to be held on 30 August 2001⁵²³. The Constituent Assembly was, thus, to become the legislature of an independent East Timor⁵²⁴. It was foreseen that the Constituent Assembly be composed of 88 members, comprising 13 representatives elected from districts and 75 representatives elected nationwide⁵²⁵. The provisions regarding the Constituent Assembly also foresaw the establishment of an Independent Electoral Commission (IEC) as the exclusive electoral authority in East Timor, composed equally of two East Timorese and three international members⁵²⁶. Six weeks before the election, on 15 July 2001, the NC was dissolved and an election campaign started in East Timor, whereby 16 parties registered with the IEC⁵²⁷.

Moreover, in preparation for independence an East Timor Defence Force (ETDF) was established on 31 January 2001 to provide for the military defence of East Timor and to assist the civilian community during natural disasters and emergencies, this force was composed exclusively of East Timorese citizens⁵²⁸. On 19 August 2001 an East Timor Police Service (ETPS) was established to maintain law and order in East Timor and to be comprised only of East Timorese⁵²⁹.

The Constitution of East Timor was adopted on 22 March 2002 and it came into force with the declaration of independence of the Democratic Republic of Timor-Leste⁵³⁰. The Constitution established Portuguese and Tetum as official languages of the Democratic Republic of Timor-Leste⁵³¹ and provided for the establishment of a National Parliament and a Council of State⁵³². The first presidential elections of East Timor were held on 17 April 2002⁵³³ with the first democratic President, Xanana Gusmão, sworn in on 20 May 2002. The Constitution foresaw that the National

⁵²³ UNTAET/REG/2001/2, Arts. 1.1, 1.2.

⁵²⁴ Ibid, Art. 2.6..

⁵²⁵ Ibid, Art.4.

⁵²⁶ Ibid, Art. 11.2.

⁵²⁷ S/2001/719, Para. 2.

⁵²⁸ UNTAET/REG/2001/1, Art. 2.2.

⁵²⁹ UNTAET/REG/2001/22, Art. 2.1.

⁵³⁰ On 22 March all 88 members of the Constituent Assembly signed the *Constitution of the Democratic Republic of East Timor* to come into force on 20 May 2002, thus placing national unity above party interest (S/2002/432, Para. 4).

⁵³¹ *Constitution of the Democratic Republic of East Timor*, Section 13, Para. 1.

⁵³² Ibid, Section 91, Para. 1.

⁵³³ In the election on 17 April 2002 Xanana Gusmão received 82,69 per cent of the vote and Francisco Xavier do Amaral 17,31 per cent; 364,780 ballots were cast (S/2002/432/Add.1, Para. 1).

Parliament will have a minimum of 52 and a maximum of 65 Members, elected through ‘universal, free, direct, equal, secret and personal suffrage’⁵³⁴, and it shall be endowed with the task of making laws on basic issues referring to the country’s domestic and foreign policy⁵³⁵.

Nevertheless, the UN identified insufficient recruitment in the civil service and the ETDF as a drawback for the independent unitary state⁵³⁶, as well as the judiciary sector in the independent state due to the lack of experienced national personnel and language barriers⁵³⁷. The judicial sector is also the sector that has retained special powers reserved for UNTAET.

6.6.2 Powers reserved for UNTAET

Although most powers were devolved to the East Timorese, following independence, in the sphere of the judiciary specific powers⁵³⁸ were retained for the participation of international judges therein. Thus, several months before the declaration of independence in East Timor the UN voiced its concerns regarding the ‘fragility of the political foundations of this new country’ and called for continued assistance from the international community well after independence in order to achieve stability⁵³⁹. As a particular weakness of the system was perceived the judiciary with ‘few experienced and trained East Timorese judges, public defenders and prosecutors’⁵⁴⁰. Future concerns were also expressed with regards to stability of the border with Indonesia⁵⁴¹. In order to counter the perceived weaknesses in the judicial sector the existing judicial edifice continued to operate until a new one had been created.

Thus, the transitional judicial instances, consisting of national and international judges to judge crimes committed between 1 January 1999 and 25 October 1999 remained operational until all cases under investigation had been concluded⁵⁴². Apart from that, the existing judicial organization were to remain effective until a new

⁵³⁴ *Constitution of the Democratic Republic of East Timor*, Section 93, Paras. 1 & 2.

⁵³⁵ *Ibid*, Section 95, Para. 1.

⁵³⁶ S/2002/432, Para. 13.

⁵³⁷ *Ibid*, Para. 17.

⁵³⁸ Chopra (2002: 991) has criticized NC and NCC by claiming that legislative powers remained in the hands of the Transitional Administrator.

⁵³⁹ S/2002/80, Para. 4.

⁵⁴⁰ *Ibid*, Para. 16.

⁵⁴¹ *Ibid*, Para. 29.

⁵⁴² *Constitution of the Democratic Republic of East Timor*, Section 163, Para. 1.

system had replaced it⁵⁴³. Similarly, the Supreme Court of Justice were to remain operational until a new court had been created⁵⁴⁴ and the existing laws and regulations in East Timor were also to be retained and continue to be applicable, save in those cases when deemed inconsistent with the current Constitution⁵⁴⁵. Thus, Zaum (2007: 195) has been right in stating that the judicial system in East Timor has been its ‘Achilles heel’ since it was created from scratch. Yet, despite the listed deficiencies in the judicial sector, the defining characteristic of peacebuilding in East Timor has been the high general will of the population to participate in the political process and transitional institutions. The next section devotes attention to this pre-independence enthusiasm and commitment.

6.6.3 Election turnout, general will and representativeness

With the achievement of independence on 20 May 2002 most authors have celebrated the transition process initiated by the UNTAET as complete and thus, successful. Following the independence of East Timor, the new Democratic Republic of Timor-Leste was admitted on 27 September 2002 as the 191st member state of the United Nations⁵⁴⁶. However, this independence was well-earned with regard to the high level of local participation observed during UNTAET. The UN has commended the strong involvement of the Timorese in the peacebuilding process, for they have ‘amply demonstrated the depth of their commitment to this task through sacrifice, imagination and determination’⁵⁴⁷. Already in 2000 (a few months after the establishment of UNTAET) the UN commended the accelerated transfer of authority to the East Timorese, whereby towards the beginning of 2001, there was an all-Timorese National Council and a Timorese majority in the Cabinet, meaning that the East Timorese exercised ‘substantial government powers’⁵⁴⁸. Thus, representativeness of the institutions created was high. Voter turnout and general will of the population to participate was soaring during UNTAET. On 30 August 1999 98% of the eligible voters took part in the popular consultation to decide on East Timor’s future as an independent state or as a special region within Indonesia. On 30 August 2001 91,3% of

⁵⁴³ Ibid, Section 163, Para. 2.

⁵⁴⁴ Ibid, Section 164, Para. 2.

⁵⁴⁵ Ibid, Section 165.

⁵⁴⁶ S/2002/1223, Para. 2.

⁵⁴⁷ S/2001/983, Para. 87.

⁵⁴⁸ S/2001/42, Para. 47.

the eligible voters cast votes for a Constituent Assembly⁵⁴⁹. Moreover, in June and July 2001, preceding the election of a Constituent Assembly, 10% of the electorate took part in hearings of constitutional commissions to explain basic rights and systems of government, as well as the constitution, thus, signifying the high general will of the Timorese to participate in the political process of self-government and to accelerate the whole process of Timorization. Zaum (2007: 215) observes that in East Timor power was handed over to the local institutions not on the basis of the strength of the legitimacy of the newly-established institutions, but predominantly as a consequence of East Timorese pressures for self-governance. On the question of local participation and involvement in East Timor, Reports of the SR SG have noted that 'From the start, UNTAET has sought to establish close consultation with the East Timorese' and in that sense the NCC has represented a 'unique means for UNTAET to hear and respond to the needs of the East Timorese and for the latter to participate in important policy decisions' and notes the positive role that has been played by Xanana Gusmão in cooperating not only with UNTAET, but also including diverse groups and stakeholders from the East Timorese society⁵⁵⁰. Thus, the UN SG has concluded that only after a few months of UN involvement in East Timor and the achievements of UNTAET in the region make him 'confident about the future' of the territory⁵⁵¹.

As early as January 2001 the UN SG observed in one of his reports the accelerated transfer of authority that has been witnessed in East Timor with the establishment of an all-Timorese National Council and Timorese majority in the Cabinet, thus depicting the transfer of authority as 'progressive' and 'innovative', responding to the 'desire of the Timorese to take charge of their own fate'⁵⁵².

UNTAET has been characterized as having a 'most productive period' in the 2001 during which the East Timorese people 'increasingly on their own, have made broad advances on the path to independence and self-government'⁵⁵³. This trend was also sustained in early 2002, when 'important political advances were made, and steady gains achieved, in the complex task of establishing a public administration for East Timor'⁵⁵⁴. The establishment of an all-Timorese National Council has been

⁵⁴⁹ SG/SM/7119 and S/2001/983, Para. 4.

⁵⁵⁰ S/2000/53, Para. 70.

⁵⁵¹ Ibid, Para. 74.

⁵⁵² S/2001/42, Para. 47.

⁵⁵³ S/2001/719, Para. 62.

⁵⁵⁴ S/2002/80, Para. 4.

praised by the UN as an ‘acceleration of the “Timorization” of the administration’, endowing the East Timorese with ‘ownership of, and responsibility for, their own decision-making’⁵⁵⁵. The workings of the National Council have also been praised for extending participation to former pro-autonomy parties, thus, enhancing reconciliation and representativeness within East Timor.

Thus, the levels of general will to participate in the political process in East Timor remain commendable. These rates have been attributed to the lack of conflicting ethnic interests in East Timor and the presence of a collective national identity, as well as to the lack of obstruction from neighbouring/other countries to undermine the functioning of UNTAET, and the clarity of the goals set with a clear vision of independence⁵⁵⁶.

6.6.4 Obstruction from neighbouring/other countries to participation

In contrast to Serbia’s position with regard to Kosovo and its professed willingness to support the parallel structures of the Serb minority in Kosovo and thus undermine the entire political process of UNMIK, after initial violence on behalf of Indonesia, the former colonizer/occupier accepted its new role and the independence of East Timor. Thus, the bi-lateral relations soon developed to include reconciliation and friendship.

6.6.5 Summary

The levels of local participation in East Timor have been highly commendable. However, authors have also questioned the genuine and informed manner of participation. Hohe (2004: 303) views three factors as having contributed to the shortcoming of the democratization process in East Timor: 1) the contradiction between the traditional life⁵⁵⁷ in East Timor and the elected parliamentary state model; 2) the operation of a lot of the leaders of the political elite operate according to local paradigms on a national level, leaving the democratic model barely understood and 3) the uninformed UN personnel that excluded local politics from its structures.

⁵⁵⁵S/2000/1105, Para. 11.

⁵⁵⁶A similar argument has also been defended by Zaum (2007: 80) who states that in contrast to the Balkans in East Timor there was no need to find a solution to the previous conflict, it was clear that at the end of the mission’s mandate East Timor would be independent, which meant that institution- and capacity-building dominated the statebuilding agenda, rather than reconciliation or status issues.

⁵⁵⁷The traditional model is based on powerful local concepts of political legitimacy and the influence that a local political ruler can have on his community, which is particularly apparent in post-conflict situations when societies reproduce traditional orders in order to create stability (Hohe 2004: 305).

Another source of critique put forward to the ruling elite has been the question of language: it is claimed that CNRT promoted its leadership at the expense of other sections of the population, e.g. in August 2000 it decided to adopt Portuguese as an official language of East Timor even though it was understood by fewer than 10% of the population and ‘by virtually no one under the age of 30’ (Baskin 2004: 127). A move, which further led to the adoption of Indonesian and English as working languages in the civil sector of the government⁵⁵⁸, however Portuguese has remained an official language within the judiciary and this is also a reason why, according to commentators, the judicial organization within East Timor has had difficulties to take root in society⁵⁵⁹.

All in all, UNTAET has been defined as a “successful mission” due to the “common goals” between the East Timorese and the UN, enabling the mission to achieve these goals relatively quickly with an easily attainable exit strategy (Smith & Dee 2003: 89). Chesterman (2004: 174) has also noted that UNTAET will certainly be regarded as success – ‘its independence on 20 May 2002 was the culmination of over 25 years of struggle by the Timorese’, however, he warns that the foundations for a democratic and stable society remain ‘untested’.

Thus, the following table summarizes the local participation in East Timor.

Table 10: Local participation in East Timor

Local participation	East Timor (1999 - 2002)
High degree of devolution of institutions to local actors	+
High pace of devolution	+
High election turnout (above 70%)	+
High general will of the population to participate	+
Representative institutions (all stakeholders participate)	+
No obstruction from neighbouring countries	+

Sources: UN documentation⁵⁶⁰, Compilation: D.C.S.

However, as already pointed out, the high levels of local participation in East Timor would not have been possible without a clear and easily achievable mandate. The next section, thus, examines the benchmarks achieved in East Timor.

⁵⁵⁸ *Constitution of the Democratic Republic of East Timor*, Section 159.

⁵⁵⁹ See Zaum (2007).

⁵⁶⁰ SG/SM/7119, S/2000/53, S/2000/738, S/2000/1105, S/2001/42, S/2001/436, S/2001/719, S/2001/983, S/2002/80, S/2002/432.

6.7 Benchmarks achieved

In contrast to the Kosovo case the mandate establishing UNTAET provided for clearly identifiable and achievable goals. Moreover, the carrying out of a popular consultation and the professed desire on behalf of the East Timorese to achieve independence set common goals between the international and national segments of society enabling steady working towards their achievement. Thus, in contrast to Kosovo's vagueness, East Timor's mandate provided for the preparation of the country towards self-government. In the following section the mandate specifics of UNTAET are discussed.

6.7.1 Mandate clarity

Similar to Kosovo, the United Nations Transitional Administration for East Timor (UNTAET) began in 1999. The difference is, that unlike Kosovo, East Timor achieved independence on May 20, 2002, thus, ending the UNTAET era successfully – a fact that has led many authors to dub East Timor as a success story in UN peacebuilding⁵⁶¹.

Unlike in Kosovo, UNTAET was established on October 25, 1999, under UN SCR 1272 with the clear purpose of administering the non-self-governing territory and prepare it for independence⁵⁶². Thus, UN SCR 1272 took note of results of the popular consultation of the East Timorese people on 30 August 1999 and the expression of their 'clear wish to begin a process of transition under the authority of the United Nations towards independence'⁵⁶³.

Thus, the mandate of UNTAET was explicitly endowed with the function 'to support capacity-building for self-government'⁵⁶⁴ and also stressed the need for UNTAET to 'consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions', stressing the need to transfer to these democratic institutions power as soon as possible⁵⁶⁵.

Therefore, in contrast to Kosovo's contradictory mandate with vague objectives, the mandate of UNTAET was clearly-set and defined. The mandate of

⁵⁶¹ Smith and Dee (2003), Chesterman (2004), Doyle and Sambanis (2006).

⁵⁶² UNSCR 1272, Preface referring to the May 5, 1999 Agreement between Portugal and Indonesia.

⁵⁶³ S/RES/1272, Preface.

⁵⁶⁴ Ibid, Para. 2.

⁵⁶⁵ Ibid, Para. 8.

UNTAET was also much more easily attainable for there was no need to set specific standards to be achieved before progress upon the final status could be reached, in other words, there had been no preconditions deemed as important that need to be attained before a next stage of goal settlement and achievement can commence. Perhaps the clarity of the mandate was due to the less ambitious nature of standards set or perhaps it was due to the fact that there were no vital differences in the interests of international powers with regard to the future of East Timor, as was the case in Kosovo.

6.7.2 International powers contrary to positions of UN TA

There have been no international powers opposed to the independence of East Timor and the determination of the future of the region through a popular consultation, carried out on 30 August 1999. Neither have there been obstructions to believing that the opinion of the East Timorese was an expression of their right to self-determination and will to exercise self-government in an independent state.

6.7.3 Summary

UNTAET has not had specific benchmarks to achieve as was the case in the *Standards before Status* and *Standards for Kosovo* policies in the previous case. Therefore, the following table summarizes the mandate specifics in East Timor and the clarity of the objectives set.

Table 11: Benchmarks achieved in East Timor

Benchmarks achieved	East Timor (1999 – 2002)
Clear mandate	+
Clear objectives	+
High number of benchmarks achieved	-
No support of powerful international actors of positions contrary to UN	+

Sources: UN SCR 1272, compilation: D.C.S.

Thus, it can be stated that in East Timor the international community achieved the benchmarks that it had set for the region. However, perhaps the benchmarks achieved as set by the UN and the simplicity of the UNTAET mandate can also explain why four years after departure of the TA a renewed violence had occurred. In fact, a closer examination of UNATET's mandate reveals that there were no liberal guarantees for

the safeguarding of the peace promoted, as was the case in Kosovo. Rather the mandate mentions the necessity to establish democratic institutions and focuses overtly and extensively on the questions of devolution of power, close cooperation and consultation with the local population, but, indeed, there is no guarantee that the institutions created will be liberal and not merely democratic. Thus, this study argues that the lack of liberal standards to achieve was perhaps a failure on behalf of the international community that seemingly translated into pseudo-local ownership. Thus, if Kosovo represented a multitude of liberal standards (benchmarks) to achieve, East Timor's mandate hardly provided any. The first case led to a stalemate and overburdening of society, whereas the latter case left too much leeway for self-government that eventually degenerated into violence. Thus, in hindsight, this study argues that neither Kosovo, nor East Timor provided examples of an ideal *Space for Local Ownership of Peacebuilding*.

6.8 SLOP in East Timor

Yet, despite recent violence and fragile stability UNTAET celebrated in 2002 East Timor's independence as marking the end of one of the most successful peacebuilding missions in UN history. Thus, the UN concluded that the 'progress that has taken place in the country offers great promise'⁵⁶⁶. The UN stated that it is proud of its mission in East Timor and views it as having laid down the 'political foundations of a new State' and having 'successfully addressed challenges to security and in setting out the basis for economic development', claiming that 'the people of East Timor and the international community have much to be proud of in all that has been accomplished to date'⁵⁶⁷. The UN clarified East Timor's achievement as having moved from 'widespread devastation to the establishment of the foundations for the administration of a new country and to the rehabilitation of a basic infrastructure that can support economic and social activity'⁵⁶⁸. Indeed, few would have imagined that a '*de novo*' public administration can be established within 30 months⁵⁶⁹. However, as Jarat Chopra notes the much celebrated success of UNTAET needed also to take account of the unique factors that enabled the achievement of success (quoted in Hood 2006: 60):

⁵⁶⁶ S/2002/1223, Para. 50.

⁵⁶⁷ S/2002/80, Para. 98.

⁵⁶⁸ S/2002/432, Para. 2).

⁵⁶⁹ S/2002/432, Para. 107.

There were conditions for success that were rarely available to peace missions. The belligerent power had completely withdrawn...an effective multinational force could credibly guarantee internal and external security...the local population openly welcomed the UN [and] there was a single interlocutor with which to negotiate – the National Council of Timorese Resistance (CNRT) – rather than a myriad of unstable factions.

Thus, one can conclude that *SLOP* in East Timor has been significantly higher than in Kosovo and it has only been at a later stage that some of the problems plaguing East Timor such as lack of qualified human resources and a weak justice sector have escalated calling the overall situation in 2006 ‘fragile’⁵⁷⁰.

6.8.1 Rationalism vis-à-vis constructivism in East Timor

In contrast to Kosovo’s case where rationalism and a horizontal reading proved to be a more powerful explanation than the vertical one, the East Timor experience offers a defence of constructivism for two reasons: firstly, due to the absence of conflicting ethnic interests during the UN TA period, it has been hard to trace the causation identified in UNMIK, or rather the contrary statement has been true, namely, that low conflicting ethnic interests lead to a greater *SLOP* through higher levels of local participation and benchmarks achieved. Secondly, the existence of a collective national identity has demonstrated that it is easier to identify common goals between the peacebuilders and peace-bearers and respond to the wishes of the population, which in this case has constituted accelerated devolution of transitional power and independent self-government. Thus, the existence of a common identity has enabled the East Timorese to channel their wishes and desires to UNTAET in a much easier way and alleviate the entire peacebuilding process, emphasizing the mutual constitution of the variables identified.

6.9 Conclusion

The current chapter has illustrated the specifics of international peacebuilding under the auspices of the UN in East Timor. It has been demonstrated that the lack of conflicting ethnic interests, indeed, leads to a greater *SLOP*. However, it has also been

⁵⁷⁰ S/2006/24, Para. 55.

argued that the *Space for Local Ownership of Peacebuilding* can also be misleading if it does not have sufficient liberal standards to guarantee that a recurrence to violence will not occur. The East Timor case has been extremely successful in achieving high levels of local participation, extremely high voter turnout, committed political engagement and participation, however, this study is unsure whether the nascent collective identity witnessed in 1999 in East Timor and the enthusiasm surrounding it have not been merely an overtly optimistic response to the prospect of practicing self-government in an independent state for the first time in five centuries, rather than a genuine understanding of the political process. Thus, in hindsight, this study poses the question as to whether the demonstrated local participation and engagement has been genuine, and thus, sustainable, or purely a matter of light heartedness that eventually proved to be ephemeral. Nevertheless, in 2002 UNTAET was celebrated as one of the most successful peacebuilding missions in UN history and taking a glance back towards this period of short duration of UN transitional governance in East Timor one is surprised at how much had been achieved in such a short time period of time. In fact, most of the established institutions and structures corresponded directly to those established in Kosovo and occurred within the same time-frame. However, if peacebuilding in Kosovo lacked in enthusiasm, general will and commitment, East Timor provided exactly the opposite experience in terms of willingness to participate and practice self-government. However, mere local participation responsible for the democratic dimension to local ownership is not deemed as a sufficient prerequisite for the achievement of sustainable local ownership, indeed liberal local ownership is required as well. In retrospect, it is evident that the international community in East Timor concentrated too much on the democratic dimension of local ownership, neglecting the liberal side to it. The lack of liberal safeguards, argues this study, enabled societal tensions to develop and seek violence for their resolution instead of the rule of law. Nevertheless, the enthusiasm with which both the international peacebuilders and local peace-bearers attempted to build political institutions from scratch in East Timor is commendable.

7. CONCLUSION

7.1 Evaluation of the Kosovo and East Timor comparison

This study has sought to answer the question of whether UN peacebuilding in failed states under the auspices of TAs has been successful in handing over power to the local population, e.g. in achieving local ownership. In order to answer the research question posed, the intricacies of UN peacebuilding via TAs in Kosovo and East Timor have been investigated. Upon examination of the peacebuilding process in both cases, three propositions have been formulated with regard to the success of a TA: firstly, a TA tends to be more successful in achieving local ownership when polarizing divisions in a society (such as conflicting ethnic interests in Kosovo) are low, secondly, a TA is more successful when local participation is high and thirdly, a TA is more successful when more benchmarks have been achieved, reflecting the clarity of the mission mandate and mission objectives. The causal link that this study has suggested is that lower conflicting ethnic interests result in higher local participation and more benchmarks achieved, thus constructing the *Space for Local Ownership of Peacebuilding (SLOP)* model. However, once in place, the *SLOP* model has also suggested that peacebuilding via a TA can undertake a life of its own, implying that once drawn into the peacebuilding endeavour conflicting ethnic interests, local participation and benchmarks achieved all become mutually constitutive exercises that additionally impact upon each other and all together on *SLOP*. Much in the same way that Barnett & Finnemore (2004) suggest that international organizations are not black boxes and develop a life of their own, so too, suggests this study that by practicing peacebuilding TAs also develop a life of their own. In fact they create their own *Space for Local Ownership of Peacebuilding (SLOP)*, a space, which develops its own intrinsic dynamic and which is malleable and susceptible to the relationships identified within it. The development of such a space with own ‘tactics’⁵⁷¹ is witnessed in the Kosovo case, where the connection of the benchmarks achieved to the question of the final status of the province created an additional milieu for the activity of spoilers in

⁵⁷¹ See Smirl (2008: 239).

the peacebuilding process. Spoilers who viewed the status question as a leeway for in adherence to the benchmarks stipulated.

In trying to measure the success of a TA this study has proposed a staged variable of success. In order for a TA to be successful in its endeavour of transitional nature and be able to hand over power to the local population and leave (stage II of success) it needs to have achieved local ownership first (stage I of success). Local ownership, in turn, is viewed as an interplay between conflicting ethnic interests, local participation and benchmarks achieved, which together determine the *Space for Local Ownership of Peacebuilding*. This study has argued that the *SLOP* model combines two different dissections referring to two different interpretations attached to it: a vertical dissection, which is based on the postulates of social constructivism and emphasizes the mutual constitution of the variables identified, and a horizontal dissection, which finds resonance with rationalism in International Relations and depicts a causation between the independent variable of conflicting ethnic interests, the intervening variables of local participation and benchmarks achieved and the dependent variable of local ownership. Thus, the *SLOP* model has emphasized the importance and presence of both dissections in UNMIK and UNTAET, claiming that rationalism and constructivism can be complementary to one another and in their complementarity provide a better explanation and understanding of the peacebuilding process in Kosovo and East Timor.

Based on the inductive comparison between Kosovo and East Timor Table twelve has been constructed with regard to the interconnectedness and interplay of the macro, meso and micro levels of analysis relevant to peacebuilding via TAs. Table twelve elaborates on the propositions made and summarizes the findings of the study as follows:

Table 12: The Space for Local Ownership in Kosovo and East Timor

Variable	Conflicting ethnic interests	Local participation	Benchmarks achieved	Space for Local Ownership of Peacebuilding
Case study				
Kosovo (UNMIK)	high	low	low	low
East Timor (UNTAET)	low	high	high	high

Sources: comparison of UNMIK (1999-2008) and UNTAET (1999-2002), author: D.C.S.

Having analysed the peacebuilding efforts of both UNMIK and UNTAET the study concludes that a crucial difference between the structure of the Kosovo and East Timorese societies has been the presence of high conflicting ethnic interests in the former and the absence thereof in the latter. In other words, the presence of a collective national identity in East Timor has made it easier to identify common goals between the peacebuilders and peace-bearers and has made it easier for prominent leader Xanana Gusmão to channel not only the will of the Timorese people to participate in the structures being built, but to actually exercise self-governance and thus, achieve the distant dream of being independent and own their future peaceful development. Consequently, a higher *Space for Local Ownership of Peacebuilding* in East Timor has been an indicator for the international community that the society in question is willing to be in the driving seat and determine its own governance; the higher space witnessed in East Timor has also been one of the prime reasons for achieving independence so quickly and the departure of the international peacebuilders, a.i. for the success of UNTAET.

By comparing UNMIK with UNTAET this study has focused deliberately on UN documentation that elaborates the progress made by each TA, avoiding the harsh voices of critique of the NGO-sector or local civil society organizations. The study has, thus, predominantly used the progress reports of the UN SG on both TAs: UNMIK and UNTAET. In doing so, the study has sought to unravel the black box of peacebuilding in Kosovo and East Timor and demonstrate why some peacebuilding missions have been successful in terms of their ability to hand over power to the local population and leave (East Timor, El Salvador, Cambodia) and why other missions have been going on forever (Kosovo, Bosnia-Hertsegovina). Thus, this study bears implications both for the practical and theoretical field of analysis.

7.2 Implications

The proposed model of *Space for Local Ownership of Peacebuilding (SLOP)* suggests implications both for the policy-making field and for the theoretical field. The merits of the proposed model can be elaborated as follows: Firstly, the linking of peacebuilding by TAs with the developmental concept of local ownership is a relatively new undertaking; Secondly, the investigation of local or micro factors within

the workings of a TA reflects a relatively unexamined field in the predominantly macro-oriented peacebuilding literature; Thirdly, this model offers two dissections (readings) to it, one following rationalism and a second one using constructivism, thus, indicating that both strains of thought can, indeed, be complementary when explaining peacebuilding; Fourthly, the constructed model of *SLOP* challenges dominant viewpoints of peacebuilding that have suggested that one should exclude local participation from TAs (*IBL*), rather, this model demonstrates that a major difference between the Kosovo and East Timor experiences of peacebuilding has been the inclusion of the will of the Timorese people in the peacebuilding process and their active demands to participate on the path to self-government and independence; Lastly, this model suggests the notion of ‘stages of success’ as being more appropriate when examining the efforts of TAs, instead of simply dubbing a peacebuilding endeavour as a success or failure. ‘Stages of success’ reveal not only the two stages of success that this study analyses, but also point towards a model that resembles a spiral. In other words, the *SLOP* model reveals not only the criteria and the relations between them that have affected the ability of a TA to achieve local ownership and thus, be successful, but being a dynamic and malleable model, *SLOP* also suggests that having achieved local ownership once does not dub the mission as successful indefinitely. Rather, it is a success that needs to be continued and sustained. The East Timor experience has demonstrated how overt enthusiasm and high local participation levels can degenerate into violence and renewed conflicts if the benchmarks achieved have not been sufficient in quantity and quality to guarantee that such a recurrence will not take place. Thus, this model reflects the dynamics of peacebuilding by illustrating not only that in order to move to the next stage of success one ought to have achieved the previous stage, but also elaborates on the idea that the already achieved stage of success need not be overestimated, but continuously sustained.

Thus, *SLOP* reflects the challenges that contemporary peacebuilding efforts face and simultaneously establishes mutually constitutive and causal links that determine the success of a TA. *SLOP* also reveals the inherent complexity and multidimensional nature of peacebuilding. By corresponding to two theoretical readings of International Relations theory – Rationalism and Constructivism, *SLOP* demonstrates that it can transcend particular theoretical orientations and postulations.

7.2.1 Theoretical implications

On a theoretical plain of analysis several implications have been drawn. The first one refers to the rationalist-constructivist debate and possibilities for transcending it, and the second one refers to the bridging of the apolitical with the political approaches to peacebuilding.

7.2.1.1 Rationalism vis-à-vis constructivism

At the start of this study and throughout the literature review and research design, it has been elaborated on how up to date there have been numerous undertakings towards the study of peacebuilding and TAs: some have preferred a rationalist line of argumentation and other authors have elucidated on the strength of constructivist arguments. However, there have been seldom undertakings that apply more than one theoretical approach to the explanation of events and attempt to bridge the two seemingly contradictory positions between the ‘logic of consequences’ and ‘logic of appropriateness’, for as Fearon and Wendt (2002) suggest, the differences between the two theoretical approaches are more often stressed than their connectedness. The introduction of *SLOP* as an explanatory model for peacebuilding via TAs in the two cases of Kosovo and East Timor has suggested not only that each case can be commented upon from a different logic of action, rather it has also suggested that the two logics of action can be combined in a spatial way, as in *SLOP*, which offers a better explanation of the entire peacebuilding process via TAs.

7.2.1.2 Beyond the political/apolitical divide within peacebuilding

This work has attempted to underscore previous predominant works in the field of peacebuilding, such as Paris’s *Institutionalization before Liberalization* strategy and Simon Chesterman’s approach of having local ownership as an end result but not a means to an end. In fact, this work has tried to prove that local participation in the peacebuilding process and local polarizing divisions, be it on ethnic, racial, gender or other grounds are likely to influence the success of the peacebuilding process in terms of it being able to foster effective local ownership leading to a sustainable peace. In this sense, the work has also tried to counter the predominant field of policy-making that has been influential in the study of peacebuilding exercises, which unfortunately

overstates the role of the international agencies, donors and peacemakers, and underscores the demand side of peacebuilding. *SLOP* has illustrated that the demand-side is particularly important when trying to build long-lasting and sustainable peace. Simultaneously, this study has taken heed of the potential dangers of spoilers in peacebuilding and has, thus advocated the importance of benchmarks achieved when examining local ownership, which are to safeguard not only the quantity of local participation, but also its quality.

7.2.2 Policy implications

The policy implications uncover the adaptability of the *SLOP* model for future UN cases of peacebuilding in post-conflict societies, drawing on the relevance of the Kosovo and East Timor cases in the field of International Relations. The uncovering of the policy implications for future peacebuilding missions is done in two steps: firstly, by undertaking a closer look toward the current developments in Kosovo and East Timor, it will be attempted to establish *post-factum* whether the propositions made by the current study are still relevant and secondly, attention will be dedicated to the implications of *SLOP* for future peacebuilding missions.

7.2.2.1 Current developments in Kosovo and East Timor

It is obvious that *de jure* a lot has been achieved in Kosovo – Provisional Institutions for Self-government have been established, free and fair elections have taken place, yet, *de facto* the TA has lacked in local ownership. The analysis on the international, national and local levels of UNMIK have shown that conflicting ethnic interests have permeated every level of UNMIK and have hampered its successful termination, starting from the mandate specifics and status question and ending with the local participation in government. Ironically the international community got involved in Kosovo in order to protect the Albanians from the Serbs and ended up protecting the Serbs from the Albanians. After ten years of international involvement the question of minority rights protection in Kosovo still has not been resolved. In this sense, it is doubtful that the international community (the European Union) will be able to leave Kosovo in the near future. If anything, the newly declared unilateral independence by Kosovo on 17 February 2008 only seems to strengthen the failure of the international

community to reach a compromise and meaningful dialogue between Kosovo Albanian and Serbs who remain split up and unable to cohabit and coexist.

The recent violence in East Timor has been troubling as well. In April and May 2006 'at least 37 people were killed, more than 150 injured and 150,000 were displaced' as riots and fierce fighting between government troops and disaffected military troops broke out⁵⁷², outbreaks of violence followed in February and March 2007 and currently a renewed United Nations Integrated Mission in Timor-Leste (UNMIT, 2006 – present) is being institutionalized in the independent country. The outbreaks of violence in East Timor on 20 April 2006 have been directly connected to the dismissal of nearly 600 members in mid-March of the East Timorese armed force (FALINTIL) who had complained of a discriminatory treatment⁵⁷³ in East Timor's Defence Force (ETDF).

As a cause of the violence are often quoted dissatisfaction with the government on behalf of the Church and civil society, antagonisms between the police force and the armed forces and east/ west frictions⁵⁷⁴. The planning of a new stabilizing mission in East Timor post-2006 and the violence, however, 'needs to recognize that there has been a considerable degree of success in the development of many aspects of governance in Timor-Leste', therefore a comprehensive involvement within Timor-Leste has been declined by the UN⁵⁷⁵. It has been pointed out that power imbalances between the ruling FRETILIN and all other political parties need to be addressed, as crucial have also been viewed the establishment of a community dialogue and national reconciliation that bridges all local, regional and national levels⁵⁷⁶.

The justice sector also seems to be lacking legitimacy as fluency in Portuguese remains low throughout the Court system, yet the majority of legislation drafted is in Portuguese, the Courts, on the other hand utilize the widely-spoken Tetum and there have not been enough resources to translate all the new legislation in Tetum, which has generated a 'widespread perception that the justice system generally fails to hold criminal wrongdoers to account or to provide adequate resources in civil disputes'⁵⁷⁷. All in all, the UN concludes that 'Timor-Leste achieved remarkable progress in

⁵⁷² S/2006/628, Para. 73.

⁵⁷³ Ibid, Para. 2.

⁵⁷⁴ Ibid, Para. 22

⁵⁷⁵ Ibid, Para. 40

⁵⁷⁶ Ibid, Para. 45-47

⁵⁷⁷ S/2006/628, Para. 84-5.

statebuilding over the six years that have elapsed since the tragic events of 1999... with the help of the international community, the country has established much of the institutional structure that constitutes the core of a democratic state', however there has been a 'lack of a sufficiently developed democratic culture and practices; uneven progress in translating progress in statebuilding into human development, including reduced poverty, inequality and unemployment rates, especially among the youth; inadequate access to formal education and other basic health and social services',⁵⁷⁸.

Despite all previous achievements one undoubtedly poses the question as to whether the quickly celebrated independence and success of East Timor was not really a precarious institutionalization that would soon give in to old divisions and feuds. Pictures of East Timor today depict it as a failed state once again. Has the success chain somewhere along the line been broken, so that a return to violence has taken place? Have the created institutions not really been inclusive, and thus, successful? The UNTAET period of administration was successful, however, what about the subsequent peacekeeping missions in the independent Democratic Republic of Timor-Leste: UNMISET – United Nations Mission of Support in East Timor⁵⁷⁹ – mandated to provide assistance to the newly independent East Timor until all operational responsibilities were fully devolved to the East Timorese authorities (2002-2005), UNOTIL – United Nations Office in Timor-Leste – was a purely political mission that succeeded the previous peace-keeping mission and was responsible for the training of police and the observance of democratic governance and human rights (2005-2006) and the current UNMIT⁵⁸⁰ - United Nations Integrated Mission in Timor-Leste (2006) - are these missions managing to integrate the local stakeholders well enough in order to promote lasting and effective post-conflict institutions? All this proves that a level of TA success needs not only be achieved, but also sustained and further developed.

The current developments in both Kosovo and East Timor prove that the key notion of stages of success is extremely important when trying to sustain peace within

⁵⁷⁸ Ibid, Para. 92-3.

⁵⁷⁹ UNMISET was established to provide assistance to East Timor until the viability of a public administration, to assist in the development of a law enforcement agency that will operate in accordance with international human rights standards, to contribute to the maintenance of external and internal security (S/2002/432, Para. 64).

⁵⁸⁰ UNMIT was established to assist the East Timorese government in consolidating political stability and enhancing a culture of democratic governance; its aims were also to support the 2007 electoral process, to strengthen capacity-building (particularly in the defence and armed forces), to reduce poverty and to further the implementation of justice and reconciliation, amongst other (S/2006/628, Para. 115).

a previously conflict-ridden society. Nevertheless, before referring to sustainable peace one ought to make sure that the ground for such has been laid down. In contrast to UNMIK, which failed to achieve the desired benchmarks of promoting a Serb-Albanian dialogue in Kosovo, UNTAET can be dubbed as a successful mission for it managed to achieve the aimed initial levels of local ownership and self-government. Despite the brief eruption of violence in Timor-Leste in 2006, this study believes that UNTAET will remain a success story in the history of UN peacebuilding for it managed to achieve what many previous UN peacebuilding missions had failed to – namely, combine high levels of local participation with the liberal benchmarks set, a.i. UNTAET managed to synchronize the local will with the international goals in an extremely successful manner. It is clear that every newly-independent country faces difficulties. Nevertheless, it is much easier to tackle difficulties as a united and independent society than a region that continues to contest its final status (Kosovo).

7.2.2.2 Implications for future peacebuilding missions

So, what are the implications for future UN peacebuilding missions? The Kosovo experience in peacebuilding has seemed to set a precedent in International Relations. It has been viewed as a precedent with good and bad connotations attached to it. Towards the end of 2007, long before the unilateral *Declarations of Independence* of Abkhazia and South Ossetia from Georgia in August 2008, Russia's current Prime Minister Vladimir Putin stated 'If people believe that Kosovo can be granted full independence, why then should we deny it to Abkhazia and South Ossetia?'⁵⁸¹. Similarly, Serbian President Boris Tadic declared 'Who guarantees that parts of your countries will not declare independence in the same way?'⁵⁸² According to Ignatieff (2003: 70) the Kosovo case has set two types of precedents: firstly, that states can lose sovereignty over a portion of their territory if they oppress the majority population within this territory and there is a successful rebellion and secondly, that violence does pay off in a self-determination struggle⁵⁸³. However, Ignatieff (2003: 70) also adds that losing sovereignty over parts of one's territory is not a universal principle; double

⁵⁸¹ *The Economist*, If Kosovo Goes Free, 1 December 2007, pp. 36.

⁵⁸² Grunwald (2008: 7).

⁵⁸³ This dangerous statement has also been elaborated by King & Mason (2006: 21):

If Kosovo gains its independence without having embraced ethnic diversity or the rule of law, it will be a thundering confirmation of the axiom that might makes right.

standards apply, as the United States supported the Kosovo struggle for self-determination, but it will never support the Chechens against Russia or the Uighurs against the Chinese. Thus, despite the strenuous and long efforts of peacebuilding in Kosovo, similar to the mixed record of peacebuilding of UNMIK, Kosovo sends mixed signals to other countries with high conflicting ethnic interests and separatist intentions. On the one hand, Kosovo is unleashing a 'Cold War feel' due to the 'balkanization' in the World as to whether to recognize the unilaterally declared independence of the province or not (Grunwald 2008: 7). On the other hand, Kosovo represents one of the most intensive, costly and determined UN missions to foster local ownership and good governance in UN history, and this study doubts that the boycotting actions of the Serbs and the parallel institutions created in Kosovo would have been able to survive for so long, were it not for the support from Serbia proper and the defence of this position by powerful international actors.

The East Timor case under UNTAET also sets a precedent and proves that a collective identity can be extremely beneficial to international peacebuilding. On this basis one can argue that Afghanistan and Iraq might continue to be challenging cases for international peacebuilders precisely due to the lack of a collective identity and the division of both countries according to ethnic and clan lines.

7.3 Ramifications

The conclusions that this study can draw from the UNMIK and UNTAET experiences point to the fact that in those cases where conflicting ethnic interests are low the UN TA has a greater chance of achieving local ownership and subsequently an easy exit strategy. On the other hand, cases such as Kosovo, where the existing ethnic conflicts and animosities have additionally been supported by powerful international actors or neighbouring states, might prove impossible to solve. One is undoubtedly reminded of Durch's (1993) statement that in those cases where international interests collide, it is more likely for the mandate of a peacekeeping and peacebuilding mission to be vague without any concrete objectives.

However, the most important conclusion that both the Kosovo and East Timor cases reiterate seems to be the need to replace the overused dichotomy of success/failure of peacebuilding with the notion of 'stages of succes'. The sustenance of

success throughout the different stages of development of a territory might be the only viable way to prevent that the society in question from disintegrating into violence or warfare after UN departure. East Timor derailed into violence only four years after UN departure and in Kosovo such violence occurred during UNMIK. Thus, it might be argued that in East Timor's case the local ownership created was veiled by a feeling of euphoria and enthusiasm that translated into high local participation but downplayed real societal divisions and problems, which resurfaced at a later stage. In Kosovo, the contrary has been true: there has been minimal euphoria and enthusiasm at the prospect of self-governance under a multitude of benchmarks set to be achieved, which has led to the over exaggeration of the societal problems and the institutionalization of conflicting identities rather than their resolution and deconstruction. Consequently, the sustenance of success throughout the different stages of peacebuilding has proven to be crucial for the establishment of sustainable peace in a post-conflict society.

Bearing the recent developments in both East Timor and Kosovo in mind, it can be stated that in an ideal situation the sustenance of success will represent a balanced interplay between the macro, meso and micro criteria identified in *SLOP*. According to the study such a balanced *SLOP* was present in East Timor during UNTAET, but declined after UN departure. This ideal situation is depicted in Figure three.

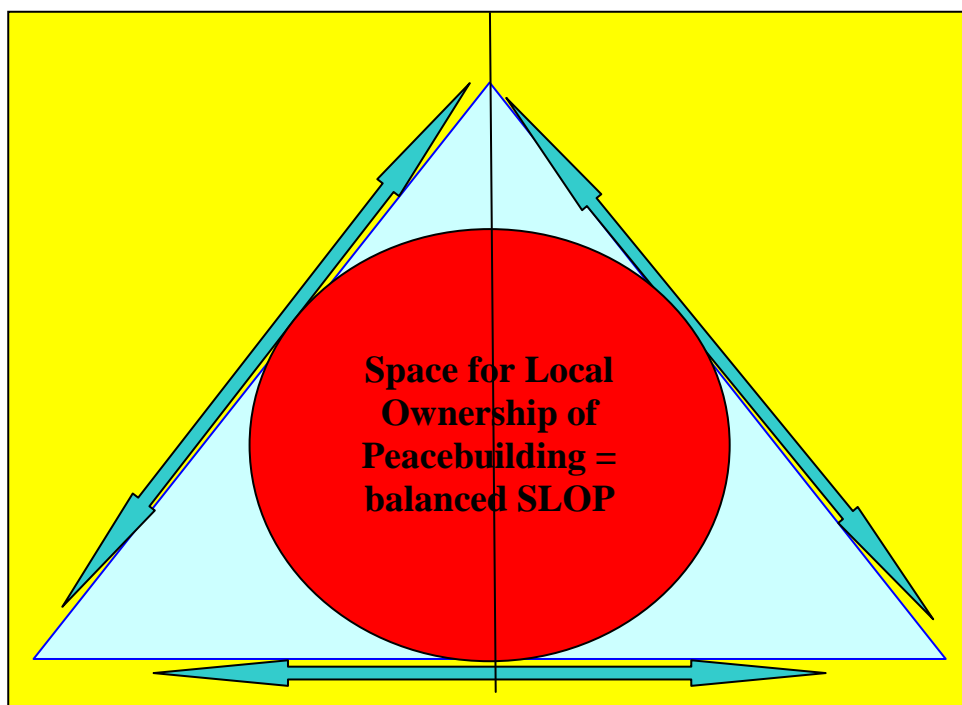
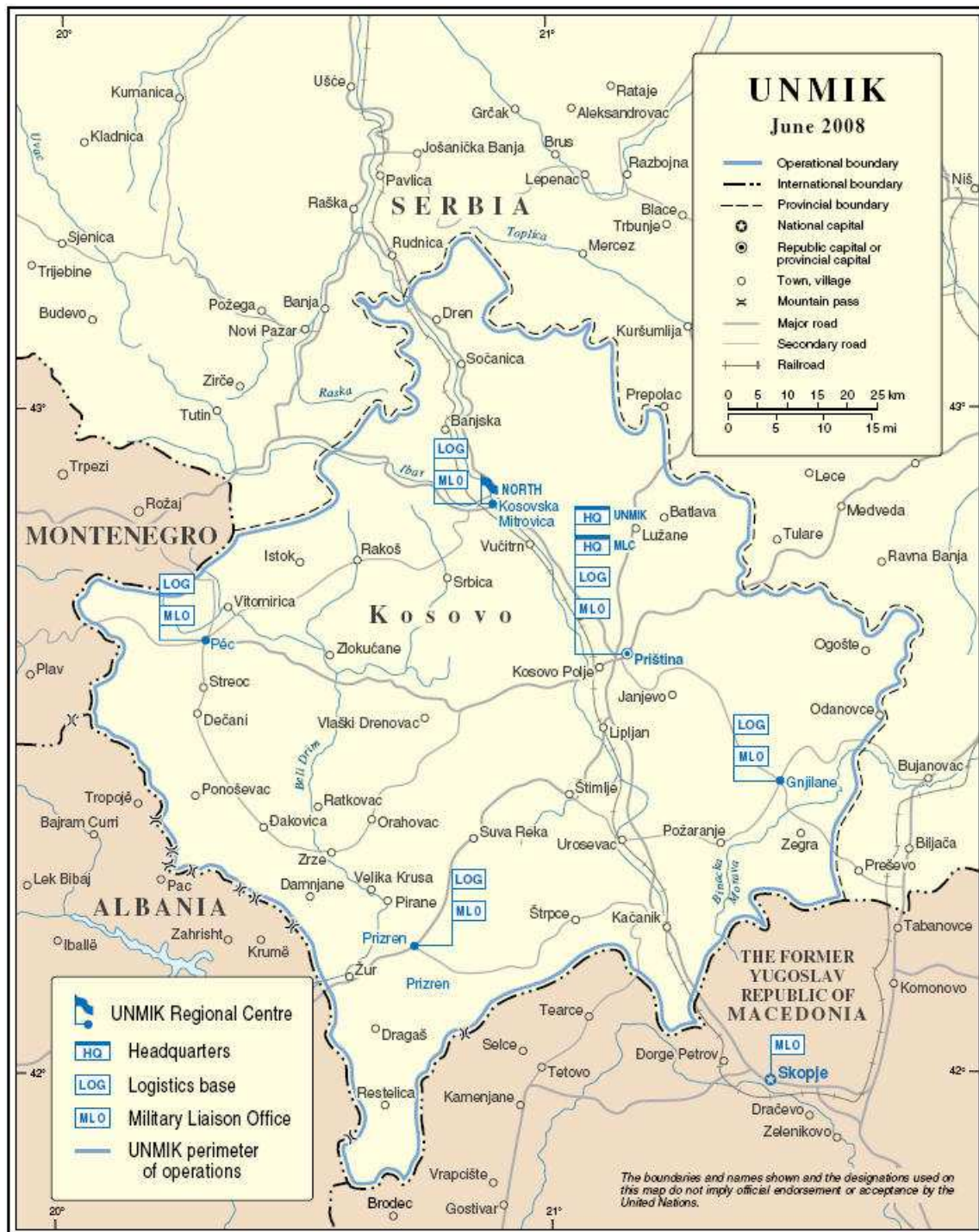


Figure 3: *Balanced Space for Local Ownership of Peacebuilding*, author: D.C.S.

In conclusion, this study has argued that the *Space for Local Ownership of Peacebuilding* has been a useful model not only to explain the workings of the peacebuilding process via TAs, but also to explain the functioning of the reconstructed state post-UN departure. This model has, indeed, suggested not only a way for transcending and bridging theoretical debates within the literature – it has also suggested that despite the identified differences between rationalist and constructivist accounts of peacebuilding, at the end of the day, a synchronization of the two offers more explanatory power with regard to the object of analysis. Then again, this study takes into consideration that it might be too soon to judge the success of a peacebuilding mission for genuine local ownership might take decades to be moulded. However, by maintaining stages of success throughout the peacebuilding endeavour, monitored by a balanced *SLOP*, peacebuilding and sustainable peace can be kept on the right track. It is of significance that the *SLOP* model is able to take into account the dynamics of current peacebuilding and does not regard the peacebuilding process as a static enterprise, merely as a ‘to do’ list, which when fulfilled is also expected to function well. The *SLOP* model has uncovered that the local population and the national governments all react to the policies and norms of good governance advocated by the UN. And it is this reaction and mutual constitution and causation that can offer the key to solving the root causes to the conflict and to making a TA successful.

Appendix 1: Map of UNMIK



Map No. 4133 Rev. 32 UNITED NATIONS
June 2008 (Colour)

Department of Field Support
Cartographic Section

Source: UN Department of Field Support, Cartographic Section, June 2008.

Appendix 2: Map of UNTAET



Source: UN Department of Peacekeeping Operations, Cartographic Section, March 2007.

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